Supreme Court, U.S.
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No.

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In the

Supreme Court of the United States

Thomas M. Parkman

Petitioner,

v.

University of South Carolina, George D. Terry,
Bobby Gist, Jennifer Ottervik, Jeffrey R. Whitson,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals For The Fourth Circuit

PETITON FOR A WRIT OF CERTIORARI

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20 pp

QUESTIONS PRESENTED

The Petitioner, a tenured librarian at a state university, received a punitive reassignment to a menial position as the result of a disciplinary proceeding based on false charges of sexual harassment. Both the Faculty Grievance Committee and the Board of Trustees' Academic Affairs Committee found that the Petitioner had been deprived of his due process rights, and the District Court as well as the Fourth Circuit also expressed concern and disdain for the way that the University refused to give the Petitioner a fair opportunity to meet the charges. Nonetheless, in an opinion clearly conflicting with those of the Seventh and Eighth Circuits, the Fourth Circuit held that the punitive reassignment did not deprive the Petitioner of any property rights or liberty interests protected by the Due Process Clause because the University did not revoke his tenure or reduce his pay.

The questions presented are:

I. Whether a punitive reassignment to a menial position, without a formal demotion or loss of pay, deprives a tenured University Librarian of a protected property right?

II. Whether a University's announcement of false charges of sexual harassment deprives a tenured Librarian of a liberty interest in his professional reputation and employability even where the University maintains his tenure and pay but reassigns him to a menial position?

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Thomas M. Parkman respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit in this case.

OPINIONS BELOW

The opinion of the Court of Appeals is unofficially reported at 44 Fed. Appx. 606, and it also is set forth in the Appendix (App.1). The opinion of the District Court is unreported and it is set forth in the Appendix (App. 33).

JURISDICTION

The opinion of the Court of Appeals was entered on August 6, 2002. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISION INVOLVED

The Due Process Clause of the Fourteenth Amendment of the United States Constitution provides, in pertinent part: '[N]or shall any State deprive any person of life, liberty, or property, without due process of law."

STATEMENT OF THE CASE

I. Introduction

The Petitioner held a tenured position as Head Music Librarian at the University of South Carolina from 1982 until 1995, when he was reassigned to a position as a "Special Projects Librarian" in another library. Although the University did not officially reduce his rank as librarian or his pay, it effectively demoted him by reassigning him to a menial position with duties normally performed by student assistants.

This reassignment, and an accompanying written reprimand which was placed in his personnel file, were imposed as punishment resulting from a disciplinary proceeding conducted by the University's Equal Opportunity Programs Office (EOP) to address false charges of sexual harassment made against the Petitioner. The Faculty Grievance Committee and the Board of Trustees' Academic Affairs Committee found that the Petitioner had been deprived of his due process rights, and remanded the matter to the EOP Office to reopen the matter and follow proper procedures. However, after waiting for almost a year for the EOP to comply, the Petitioner brought this Section 1983 action.

Although the District Court concluded that the Petitioner had presented a jury issue on the violation of his procedural due process rights, the court held that the Petitioner could not show that he was deprived of a protected property or liberty interest because his tenure was not revoked and his pay was not reduced. Despite the procedural flaws underlying the demotion and reprimand, the Court of Appeals issued its decision affirming the order of the District Court order granting summary judgment to the Respondents.

While expressing disdain for the EOP's handling of the charges, the Court of Appeals held that tenured public employees do not have property rights protected by the Due Process Clause to a specific position or assignment and that no deprivation occurs unless there is a loss of rank and pay. The Court of Appeals similarly held that Petitioner could not establish that he was deprived of a liberty interest protected by the Due Process Clause because he remained employed and suffered no damage to his employment status.

II. Petitioner's Tenured Position as Head Librarian

The Petitioner first went to work at the University in 1972 as a classified, para-professional library assistant. In January 1976, he was promoted to a position as supervisor of the Music Library. [App. 138.] While working at the University, he enrolled in the Library Science program and received his degree in August 1982. Upon receiving his degree, Petitioner was promoted again and appointed to a tenure-track, library faculty position as Music Librarian in October 1982, and he received tenure in 1988. [App. 74, 80, 82.]

As the head Music Librarian in charge of the daily operations of the Music Library, Petitioner's duties were numerous and varied. Beyond his administrative duties in maintaining the facility and ordering supplies and equipment, he was in charge of hiring and supervising students and classified staff, providing research services and developing the collections. He also taught specialized music bibliography courses for masters and doctoral candidates and assisted doctoral candidates with their research. [App. 147, 150-51, 83.]

One of his major accomplishments was the planning of the new Music Library. When he first began work in the Music Library, it was located in cramped facilities in the bottom of the old McMaster College. However, he was vitally involved in the planning of a new facility which they moved into in August of 1995.

III. Petitioner's Conflicts with Respondent Ottervik

With the pending move to the new facility, a new librarian, Respondent Jennifer Ottervik, was hired as Petitioner's assistant. Petitioner was opposed to her hiring because he considered her too arrogant for the situation. [App. 144.] However, Respondent George Terry, the Dean of Libraries, ignored Petitioner's concerns and hired her despite the fact that he anticipated that there would be trouble. [App. 153.]

The Petitioner and Ottervik disliked each other from the start and as expected, there was a "clash of personalities" and disagreement about library operations. Ottervik also was open about her desire to have the Petitioner removed so that she could move up into his position as Head Music Librarian. [App. 116, 118.]

The tension apparently reached the breaking point with a disagreement over how to handle a problem with student assistants using the library computers to access pornography on the internet. On October 27, 1995, the Petitioner reported the problem to his supervisor in a written memorandum. On the same day, Ottervik filed a sexual harassment and discrimination complaint against him with the University's office of Equal Opportunity Programs.

After she was hired, Ottervik set out to remove the Petitioner and take his place as Head Music Librarian and ultimately she achieved her goal with the assistance – even if unwitting – of Respondents Terry and Gist. She became the head Music Librarian when the Petitioner was reprimanded and reassigned to a "special projects" position with duties normally assigned to student assistants.

IV. The Accusations of Sexual Harassment

In a very broad, vague complaint, Ottervik alleged that Petitioner made sexually offensive remarks in her presence and that he had referred to her as "stupid" and a "power hungry bitch." Much more devastating, however, was her accusation that he made numerous sexual advances toward male students and student assistants.[1] However, she did not provide any names, dates or other specifics about her accusations.

Several days later, Respondent Jeffery Whitson, a student of Ottervik who worked in the Music Library as a graduate assistant, filed a complaint with the EOP accusing Petitioner of making sexually suggestive comments to him and physically touching him against his will.

V. The University's Refusal to Afford Petitioner a Fair Opportunity to Meet the Charges

The EOP Director (Respondent Bobby Gist) sent redacted copies of the complaints to the Petitioner and instructed him not to discuss the complaints with any member of the faculty, staff, or students.[2] Gist also directed the Petitioner to submit a formal response to the complaints and identify any witnesses to testify in his favor. However, the complainants' lists of witnesses had been redacted from the complaints, and Gist did not provide Petitioner with any specifics regarding the allegations, the names of the complainants' witnesses or the substance of any witness statements.

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[1] These allegations were similar to accusations which were made against the Petitioner in a complaint back in 1992. The complaint was never formally investigated and the University had agreed to purge all references to it in his file but records were retained in the University's Personnel Office. Ottervik admitted that she had learned of the incident just a few months before she made her report.

[2] Dean Terry also instructed the Petitioner not to communicate with any of the employees of the Music Library until the investigation was complete. Paradoxically, Ottervik was not so restricted and she contacted a number of individuals and prompted them to make complaints about the Petitioner to the EOP.

Despite being at a disadvantage because of the lack of information and restrictions imposed by Gist, the Petitioner filed a written response to the complaints denying that he had ever engaged in unprofessional conduct or made sexual advances toward any male students or assistants. Petitioner also requested the names, addresses and telephone numbers of all witnesses against him, copies of any witness statements and all other information collected by the University regarding the matter.

By letter of November 15, 1995, Gist notified the Petitioner that he had five (5) days to provide the names, addresses and phone numbers of any persons he wanted the EOP to interview on his behalf. However, Gist still did not provide any of the information requested by the Petitioner.

A month later, Gist notified the Petitioner that the investigation was complete and he made a proposal that the Petitioner accept a formal reprimand and a permanent reassignment without supervisory authority. The Petitioner rejected the proposal and Gist issued his formal "Letter Determination" on January 26, 1996, as to each complaint. Gist found that in each case, the Petitioner was guilty of violating the University's sexual harassment policy.

The Letter Determinations did not comply with the University's sexual harassment policy or the EOP's investigation procedures[3] in that they did not provide any details of the alleged misconduct and did not include a summary of the statements and evidence obtained or a chronology of the investigation. Rather, the Letter Determinations simply parroted Ottervik's and Whitson's vague allegations.

Under the University's sexual harassment policy, the EOP Letter Determinations constitute recommendations to the Dean, who has the authority to order further investigation or make his own independent determination that sanctions are not warranted, and his decisions are subject to Presidential Review by a three-member panel appointed by the University President. [App. 94.] There is also a parallel grievance procedure which provides review by the Faculty Grievance Committee.

On February 14, 1996, Dean Terry found that the Petitioner had violated the University's sexual harassment policy and he issued a written reprimand and permanently reassigned him to a non-supervisory position as "Special Projects Librarian." [App. 86.] The Petitioner formally requested that the Dean withdraw his decision, asserting, in part, that his procedural due process rights had been denied.

Dean Terry denied the request and the Petitioner followed the faculty grievance procedures and appealed to the University Provost and the University President. Upon their denials, the Petitioner then appealed to the Faculty Grievance Committee. The Faculty Grievance Committee found that the EOP Office had violated the Petitioner's procedural due process rights by refusing to provide him with the names and statements of the witnesses against him.[4] [App. 92.] The Committee referred the case to the University's General Counsel with instructions to mediate the matter with the Petitioner's attorney, and that if the mediation was unsuccessful, the whole case was to be remanded to the EOP Office for reinvestigation in accordance with the proper procedures.

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[3] The Letter Determinations also referred to and relied upon 1992 allegations which were never investigated and were supposed to have been purged.

Mediation was unsuccessful because the General Counsel refused to reconsider the reassignment and offered only useless revisions to the written reprimand. The Petitioner pursued further review by the Academic Affairs Committee of the University's Board of Trustees which simply reiterated the Faculty Grievance Committees' directives to attempt mediation, and if it was not successful, to remand to the EOP.

When mediation attempts again failed, the EOP Director requested a meeting with the Faculty Grievance Committee to clarify what he needed to do on remand. In March 1998, over a year after having directed the University to afford the Petitioner his due process rights, the Faculty Grievance Committee again determined that the Petitioner was to be given specific details of the charges against him with the names and statements of the witnesses to the alleged harassment.

On April 16, 1998, Gist sent the Petitioner a list of the witness interviewed by the EOP, but it did not include the addresses or phone numbers or the substance of their statements.[5] By October 1998, the EOP still had not provided any witness statements or interview reports, so the Petitioner notified the Board's Academic Affairs Committee and the Faculty Grievance Committee of the EOP's refusal to comply with their directives. After having not received any response, he filed this Section 1983 action in state court in January 1999.

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[4] The Committee also found that the EOP Office improperly considered the 1992 allegation of sexual harassment which Dean Terry confirmed had been "resolved in [Petitioner's] favor."

VI. The Discipline Imposed – A Written Reprimand and A Punitive Reassignment to a Menial Position

Shortly after Ottervik and Whitson made their accusations, Dean Terry temporarily assigned the Petitioner to a special project cataloging Music Library holdings in a remote storage facility. [App. 84.]

As noted above, Dean Terry found that the Petitioner was guilty and issued a written reprimand with a warning that "any future violations of this nature will be considered as an additional incident of misconduct …. and will result in a recommendation that tenure revocation proceedings be initiated." [App. 86.] The Dean also made the Petitioner's reassignment to the "Special Projects Librarian" position permanent and explained the nature of this reassignment -- the Petitioner's duties were to primarily consist of providing bibliographic control of special collections and he was to have no supervisory responsibilities, but he was to be provided with suitable workspace and there would be no change in salary.

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[5] The Petitioner also sent the EOP a list of 33 witnesses on his behalf. Of those 33, only eight of them were still with the University, but the EOP did not interview those eight and refused to seek out the others.

However, in June 1996, the Dean transferred the Petitioner to the South Caroliniana Library, which houses a special collection of state-related books, manuscripts, and other materials. [App. 89.] He was given a wooden board as a table in a cubicle in the back corner of the stacks and assigned to menial duties normally assigned to student assistants and totally inappropriate for a professional librarian. [App. 147-49, 157.] Those duties included inventorying the collection in the book division and compiling reports on unverified titles, reading the shelves to make sure the books were in order, and making photocopies. [App. 90, 148, 154-55.]

While the proceedings were pending in the District Court, the Petitioner was forced to retire from the University for medical reasons.

It is worth noting that when Petitioner was temporarily reassigned in November 1995, Ottervik assumed his duties and achieved her goal by becoming the *de facto* Head Music Librarian, although she was not formally promoted until January 1997. Shortly after she assumed the role of Head Music Librarian in 1995, she fired the Petitioner's assistant and promoted Respondent Whitson to that position.

VII. The Procedural History of this Litigation

The Petitioner originally filed his complaint in state court on January 28, 1999, and then the Defendants removed the action to federal court. The complaint stated a claim under 42 U.S.C. § 1983 for violation of the Due Process Clause in addition to other state and federal law claims which are not directly relevant to this Petition.

When discovery was complete, the Defendants moved for summary judgment. The District Court found that:

> There is certainly ample evidence to support a conclusion that the University and its EOP ignored their own procedures, placed Parkman in the impossible position of defending allegations that were both broad and vague, while prohibiting him from any activity which might clarify or narrow the allegations, effectively precluded him from contacting most persons who could serve as witnesses, ignored his requests for Ottervik and Whitson's witnesses, and considered improper evidence (the 1992 allegations) to bolster the complainants' testimony. Indeed, a jury might reasonably conclude that the EOP abandoned its duty as impartial fact finder undertaking more of a prosecutorial role by seeking out witnesses against Parkman in addition to those listed by the complainants and ignoring those who spoke favorably of Parkman (Farley), and otherwise establishing a favorable set of procedures for the complainant while both blindfolding and hamstringing the defense.
>
> In seeking summary judgment on this claim, the defendants do not directly contend that Parkman was afforded all the processes he was due. Indeed, in light of the Faculty Grievance Committee's conclusion that Parkman's procedural rights were violated in some respect and the consensus listed above, it would be difficult for this court to conclude that no genuine issue of material fact exists as to whether due process was afforded to Parkman. [App. 66-67.]

The District Court also expressed a personal sentiment that it was "greatly troubled" by the extensive evidence that the EOP had disregarded the requirements of University policies and "implemented a one-sided process that ignored basic concepts of fairness and impartiality." [App. 57.] However, the District Court found that the Petitioner's due process claims failed because the University did not revoke his tenure nor did it reduce his pay, and granted the motion for summary judgment on those Section 1983 claims as well as all the other claims.

The Petitioner appealed to the Court of Appeals for the Fourth Circuit pursuant to 28 U.S.C. §1291. Like the District Court, the Court of Appeals similarly expressed its "strong disdain for the poor manner in which the EOP Office conducted its investigation." [App. 24.] However, it affirmed the grant of summary judgment based on circuit precedent.

REASONS FOR GRANTING THE WRIT

This case concerns important constitutional questions regarding the scope of the protections afforded to tenured University faculty under the Due Process Clause.

It is beyond dispute that as a tenured University librarian, Petitioner had certain rights and interests that were protected by the Due Process Clause. Petitioner maintains that he had a protected property interest in his position as Music Librarian and that the University deprived him of those interests when it issued a written reprimand and a punitive reassignment to a menial position without first affording him a fair opportunity to respond to the charges. He also contends that he had a liberty interest in his good name and professional reputation of which he was deprived by the stigma of being branded as a sexual harasser.

The Court of Appeals held, however, that the Petitioner had no protected right in his position as Music Librarian and could not state a claim because his tenure was not revoked and there was no reduction in pay, relying on its precedent in *Huang v. Board of Governors*, 902 F.2d 1134 (4th Cir. 1990) and *Fields v. Durham*, 909 F.2d 94, 98 (4th Cir. 1990), *cert. denied*, 494 U.S. 1013 (1991). For basically the same reasons, the Court of Appeals held that the Petitioner could not prove a liberty interest claim because he remained employed, relying on its precedent in *Johnson v. Morris*, 903 F.2d 996, 999 (4th Cir. 1990).

Petitioner submits that the Court of Appeals' ruling on the property rights issue does not comport with either the spirit or the letter of this Court's decisions in *Board of Regents of State Colleges v. Roth*, 408 U.S. 564 (1972), and *Perry v. Sindermann*, 408 U.S. 593 (1972). The Court of Appeals' rulings on the Petitioner's liberty interest is, likewise, an erroneous application of the "stigma plus" test delineated in this Court's decision in *Paul v. Davis*, 424 U.S. 693 (1976), and its progeny. In addition, the Court of Appeals' rulings on both of these issues are in conflict with the decisions in other circuits. The importance of this conflict in decisions with other circuits lies in the extent to which the Due Process Clause protects public employees against serious adverse employment actions.

Accordingly, there are serious, compelling reasons for this Court to grant the petition to clarify its precedent and resolve the conflict between the circuits regarding the scope of property rights of tenured faculty protected by the Due Process Clause as well as the scope of an employee's liberty interest in being protected from the stigma of a guilty finding on false sexual harassment charges.

PROTECTED PROPERTY RIGHTS

I. The Court of Appeals' decision incorrectly limits the protections of due process afforded to tenured University faculty and conflicts with the decisions of the Eighth and Seventh Circuits.

A. Protected Property Rights under *Board of Regents v. Roth* and *Perry v. Sindermann*

Thirty years ago this Court was presented with two cases brought by two professors raising constitutional challenges to the colleges' decisions not to renew their contracts -- *Board of Regents of State Colleges v. Roth*, 408 U.S. 564 (1972), and *Perry v. Sindermann*, 408 U.S. 593 (1972).

In *Roth*, the professor had been hired for a fixed term of one academic year, but his contract was not renewed for the next year without any explanation or a hearing. The professor sued, claiming that the decision not to rehire him was punishment for making critical statements about the university and that he was entitled to notice of the reason for the nonrenewal and an opportunity for a hearing. This Court held that the professor was not entitled to a hearing because he was not tenured and there was no other evidence of circumstances to prove that he had a property interest in continued employment.

In *Perry*, the professor had been employed for ten years under a series of one-year contracts with a state college that had not adopted a formal tenure system. When the college refused, without any explanation, to renew his contract, the professor brought an action claiming that the decision was based on his public criticism of the administration and that he was entitled to a procedural due process hearing. Even though he, like Roth, was not tenured, the Court held that this professor did raise a genuine issue as to whether he had an interest in continued employment based on his allegations that the college's Faculty Guide[6] created a *de facto* tenure system that he and others had legitimately relied upon for many years.[7]

In *Roth*, the Court stated the following principles which guide due process claims such as this:

> The Fourteenth Amendment's procedural protection of property is a safeguard of the security of interests that a person has already acquired in specific benefits. These interests – property interests – may take many forms.
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> To have a property interest in a benefit, a person clearly must have more than an abstract need or

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[6] "Teacher Tenure: Odessa College has no tenure system. The Administration of the College wishes the faculty member to feel that he has permanent tenure as long as his teaching services are satisfactory and as along as he displays a cooperative attitude toward his co-workers and his superiors, and as long as he is happy in his work." 408 U.S. at 600.

[7] The Court also held that lack of tenure did not defeat the professor's free speech claim under the First Amendment. 408 U.S. at 597-98. Even in the absence of any type of contractual right, a government employer cannot take an adverse employment action against an employee in retaliation for the exercise of his First Amendment rights of free speech on matters of public concern.

> desire for it. He must have more than a unilateral expectation of it. He must, instead, have a legitimate claim of entitlement to it.
>
> ****
>
> Property interests, of course, are not created by the Constitution. Rather they are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law – rules or understandings that secure certain benefits and that support claims of entitlement to those benefits. 408 U.S. at 576-77.

This last quoted core principle is what underlies the different results reached in *Roth* and *Sindermann*. Neither professor had tenure, but Sindermann's allegations stated a colorable property interest in continued employment through the manual and course of dealings. As the Court held:

> 'Property' interests subject to procedural due process protection are not limited by a few rigid, technical forms. Rather, 'property' denotes a broad range of interests that are secured by 'existing rules or understandings.' A person's interest in a benefit is a 'property' interest for due process purposes if there are such rules or mutually explicit understandings that support his claim of entitlement to the benefit and that he may invoke at a hearing.
>
> ****
>
> Explicit contractual provisions may be supplemented by other agreements implied from

> the promisor's words and conduct in light of the surrounding circumstances.

Perry, 408 U.S. at 601-02; *see also* *Roth*, 408 U.S. at 577.

Unlike Roth and Sindermann, the Petitioner did have tenure and clearly he could not have been terminated without a fair opportunity to meet the charges. However, the Court of Appeals refused to look beyond the fact that his tenure had not been revoked or to consider that the punitive reassignment to a menial position constituted a demotion, if not a constructive discharge. For despite this Court's caution against rigid or formalistic limitations on the protections of due process, *Roth,* 408 U.S. at 572, the Fourth Circuit has decreed a bright-line rule that intra-departmental transfers and demotions do not implicate property interests. *Huang v. Board of Governors of the University of North Carolina*, 902 F.2d 1134 (4th Cir. 1990)

B. The Fourth Circuit Rule – *Huang* and *Fields*

The plaintiff in *Huang* was a tenured professor at N.C. State, where he spent 25 years as a faculty member in the Department of Biological and Agricultural Engineering. After a number of years of unsatisfactory performance and conflict within the BAE Department, it was recommended that his tenure be revoked. But rather than terminating him, the Chancellor decided to reassign him to the Division of University Studies in the School of Humanities and Social Sciences. However, the professor refused to accept the transfer and appealed the decision through the university's faculty grievance procedures which included a nine-day hearing with 40 hours of testimony from 18 witnesses. Following the recommendation of the faculty committee, Huang was transferred and his contractual obligation was reduced from 12 to 9 months although without any pay reduction. He then brought a Section 1983 claim against the university alleging that his due process rights had been violated.

The Fourth Circuit held that Huang's position as a tenured professor was a protected property right, but rejected his claim because he remained a full tenured professor at the same salary, and moreover, he had received all the process he was due and more. The Court expressed agreement with an Eleventh Circuit holding that "the transfer of tenured professors from one department to another, without loss of rank or pay, does not implicate any property interest protected by the Due Process Clause." 902 F.2d at 1142 (citing *Maples v. Martin*, 858 F.2d 1546, 1550-51 (11th Cir. 1988)). However, the Fourth Circuit also noted that: "'We are convinced that any constitutionally protected property interest [an employee has] as a result of his employment contract [is] satisfied by payment of the full compensation due under the contract.'" 902 F.2d at 1141 (quoting *Royster v. Board of Trustees*, 774 F.2d 618, 621 (4th Cir. 1985), *cert. denied*, 475 U.S. 1121 (1986)).

Several months after its decision in *Huang*, the Fourth Circuit spoke on this question again in *Fields v. Durham*, 909 F.2d 94 (4th Cir. 1990). Fields was a tenured faculty member at a community college who had been appointed to a position as Dean and Provost. When he was dismissed, he invoked his right to direct review by the Board of Trustees. Despite the fact that he was represented by counsel at a hearing before the Board in which he was allowed to produce witnesses and exhibits as well as to cross-examine other witnesses, Fields sued claiming that he was denied due process. The Fourth Circuit held that the substantial process provided to him more than satisfied the procedural due process requirements of *Cleveland Board of Education v. Loudermill*, 470 U.S. 532 (1985).

Fields argued that he had two distinct property interests – his position as Dean and Provost and his tenured faculty position – and that he never received a due process hearing on the loss of his faculty position. In rejecting his argument, the Fourth Circuit cited *Huang*, holding that a tenured faculty member's protected property right is limited to payment of his salary:

> This court has been reluctant to recognize multiple property interests within the same employment relationship. Although we recognize the significance of an employee's property interest in retaining employment, … we have previously held that the constitutionally protected property interest in employment does not extend to the right to possess and retain a particular job or to perform particular services. Rather, the property interest is more generally in continued employment, and no deprivation exists so long as the employee received "payment of the full compensation due under the contract." 909 F.2d at 98.

In the present case, the Court of Appeals failed to consider the substantial evidence that the Petitioner had a separate, distinct interest in his position as Music Librarian or that the reassignment amounted to a demotion. Instead, the Court mechanically applied the narrow, bright-line rulings from *Huang* and *Fields*.

C. The Conflict between the Circuits

The Court of Appeals implicitly acknowledged by its "contra" citation that the holdings in *Huang* and *Fields* are in conflict with the Eighth Circuit's precedent in *Winegar v. Des Moines Independent Community School District*, 20 F.3d 895 (8th Cir.), *cert. denied*, 513 U.S. 964 (1994). Winegar had been an industrial arts teacher at a certain high school for 19 years with an unblemished record when he became involved in an altercation with a student, after which he was suspended for several days and then transferred to another school. He brought suit alleging deprivation of property in violation of the Due Process Clause because he was not afforded any type of hearing or a fair opportunity to respond to the charges of child abuse.

The Eighth Circuit found that the deprivations – the suspension and the transfer – were significant, stating:

> The transfer, which might not implicate due process interests if executed for ordinary business or administrative reasons, must also enter into the calculus here. An employee can have a protected property interest in a benefit, **such as a particular assignment or duty station**, if he legitimately expects to continue in that assignment or duty station. 20 F.3d at 900 (citations omitted).

More recently, the Seventh Circuit has also recognized that tenured professors may have a property right in their professional stature that entitles them to due process incident to a dramatic change in professional duties. *Wozniak v. Conry*, 236 F.3d 888 (7th Cir. 2001). There, a tenured professor was barred from teaching any class, his research funds were canceled, and he was reassigned to manage a faculty web site. However, despite the fact that the university did not reduce his salary or formally change his title, the Seventh Circuit recognized that he was "effectively shuttled from the faculty to the administrative staff" and that his award of tenure was "as a faculty member and not just as an all-purpose employee equally suited to the classroom and the janitorial staff." 236 F.3d at 889-90. The Court found that the professor had created a factual question as to "whether the university had deprived him of his professional stature, a form of property interest – for an employer that strips an employee of the ordinary incidents of the job, in a way that could lead a reasonable, self-respecting person to resign, has constructively discharged that person even if the employee's title and salary are unaffected." *Id.*

The foundation of the Eighth Circuit's analysis on this issue was the Court's decision in *Perry v. Sindermann:* "A property interest in employment can also be created by implied contract, arising out of customs, practices and de facto policies." 20 F.3d at 899 (citing 408 U.S. at 601-02). This is a fundamental principle which the Fourth Circuit has ignored in property rights cases such as the Petitioner's.

D. Petitioner's Protected Property Rights as a Tenured Music Librarian

As widely recognized, an award of tenure at a university is a highly prized and valuable property right which protects the faculty member from termination without a grievance procedure that must comply with due process. However, that award of tenure may include other components, either expressly or by implication from policies and customs, which are entitled to protection under the Due Process Clause.

There is more than sufficient evidence which, if considered under the Eighth Circuit's *Winegar* analysis, establishes that the Petitioner did have a protected property interest in his tenured position as a Librarian, and even more specifically as a Music Librarian. For back in 1982, the Petitioner was appointed as "Music Librarian," and the University communications and evaluations always referred to his title/rank as "Music Librarian." [App. 74, 77, 79, 80.] Dean Terry testified that the Petitioner's reclassification as a so-called "Special Projects Librarian" and transfer to the South Carolinana Library was a punitive reassignment based solely on the sexual harassment charges. [App. 152.] The Dean also admitted that the only other tenured librarian who was transferred to a similar position was also reassigned as punishment. [App. 156-57.] These circumstances raise a factual question as to whether the Petitioner legitimately expected to continue as Music Librarian, or at the very least, as a Librarian with duties commensurate with this professional degree – not as a "glorified" student assistant.

Similarly, the dramatic change in the Petitioner's assignment and duties is comparable to the situation recognized in *Wozniak*. The Petitioner was stripped of the ordinary incidents of his job as the supervisor of the Music Library (a position he had held for 20 years) and relegated to a cubicle in the back corner of the stacks with a wooden board for a table and assigned to student assistant duties "reading shelves" and making copies. [App. 147-48, 90.] Surely this punitive reassignment to such menial duties could lead a reasonable, self-respecting person to resign, and thus constituted a constructive discharge even if the Petitioner retained his tenure and salary. Like Wozniak, the Petitioner was "effectively shuttled from the faculty to the administrative staff" and he too created a factual question as to whether the University deprived him of his professional stature, which is a form of property interest protected by the Due Process Clause.

E. The Need for Clarification and Resolution of the Conflict in the Circuits

There is no question but that the Petitioner's reassignment would constitute a tangible, adverse employment action sufficient to state a colorable claim of discrimination under Title VII and the Fourteenth Amendment[8] or a retaliation claim under the First Amendment. And, it also appears clear that if his case fell within the jurisdiction of the Eighth or Seventh Circuits, his claims would have survived summary judgment.

Unfortunately, however, this Court has not been presented with the opportunity to review the Fourth Circuit's, rigid, limiting rule because neither Huang nor Fields petitioned for a writ of certiorari. However, this Petitioner respectfully requests that the Court grant the petition to resolve this conflict and clarify that tenured faculty members, such as the Petitioner, must be given the opportunity to prove that they have protected, property rights in a particular assignment or that they are entitled to due process protections before they can be effectively demoted by a punitive reassignment to a menial position not commensurate with their professional standing.

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[8] *See Faragher v. City of Boca Raton*, 524 U.S. 775 (1998) and *Burlington Industries, Inc. v. Ellerth*, 524 U.S. 742 (1998) (undesirable reassignment may constitute a tangible employment action under Title VII); *Rutan v. Republican Party of Illinois*, 497 U.S. 62 (1990) (an adverse employment action does not have to be a dismissal to violate a public employee's First Amendment rights).

PROTECTED LIBERTY INTERESTS

II. The Court of Appeals incorrectly refuses to recognize the stigmatizing effect charges of sexual harassment have on the liberty interests of educational professionals and conflicts with the decisions of the Eighth Circuit and other circuits.

A. Liberty Interests Under *Roth* and *Paul v. Davis* – The "Stigma Plus" Test

In *Roth*, the Court recognized that a public employee has a liberty interest in "a person's good name, reputation, honor, or integrity" which might be implicated by a government employer's actions. The scope of that holding was clarified four years later in the Court's decision in *Paul v. Davis*, 424 U.S. 693 (1976), where it was explained that defamation or injury to reputation, absent an injury to some other right or status previously recognized by state law, does not deprive a plaintiff of any liberty interest protected by the Fourteenth Amendment. 424 U.S. at 708.

In *Paul v. Davis*, two city police chiefs created and circulated a flyer with photographs of active shoplifters, and the plaintiff in that case had been included in one of the flyers after he was arrested (but never convicted) on charges of shoplifting. The charges were eventually dismissed, but the plaintiff's employer learned of the incident and the flyer and, although he was not fired, he was warned that he "had best not find himself in a similar situation" in the future. The Plaintiff brought a Section 1983 action in which he presented this Court with the question of whether the city's defamation – standing apart from any other governmental action – stated a claim for relief under the Due Process Clause.

The Court noted that the plaintiff stated a classical claim for defamation actionable in virtually any state court, but rejected his contention that defamation by state officials is automatically actionable under Section 1983 and the Fourteenth Amendment. The Court reviewed a number of its prior cases discussing the drastic effect of stigma that might result from government defamation, and concluded that they did not support a proposition that reputation alone, apart from some more tangible interests such as employment, is either "liberty" or "property" sufficient to invoke the procedural protections of the Due Process Clause.

B. The Fourth Circuit Test – *Johnson v. Morris*

In *Johnson v. Morris*, 903 F.2d 996, 999 (4th Cir. 1990), the Court of Appeals established another perfunctory rule, just as it did in *Huang* and *Fields*, that limits recovery for injury to an employee's professional reputation to instances where the stigmatizing publication is made in conjunction with a dismissal (as opposed to a demotion) or a loss in pay or benefits.

Johnson was Warden of a Virginia prison who was accused of assaulting one of the prisoners during a disturbance, and after an investigation, he was demoted and transferred. When his reassignment and the reason for it was reported in a local newspaper, he brought an action alleging that he was deprived of a liberty interest without due process. The district court found that a liberty interest was implicated by the public announcement of the reasons for his demotion and that due process was violated when he was denied notice and opportunity to be heard. However, the Fourth Circuit held that "for a liberty interest to be implicated, some damage to Johnson's employment status must have resulted from publication of the reasons for his demotion," and concluded that he suffered no damage to his employment status because he remained employed. 903 F.2d at 999.

In other cases, however, the Fourth Circuit has indicated in dicta that stigmatizing remarks might deprive an employee of a liberty interest if made in the course of "a significant demotion," *Stone v. University of Maryland Med. Sys.*, 855 F.2d 167, 172 n. 5 (4th Cir. 1988), or some other "serious adverse employment action," *Mtingwa v. North Carolina A&T State University,* 114 F.3d 1176 (4th Cir. 1997) (Table). However, in this case, the Court of Appeals ignored the evidence that a written letter of reprimand placed in his personnel file and that the Petitioner was effectively, if not formally, demoted to a student assistant position or that the conditions and punitive nature of the reassignment constituted a "serious adverse employment action." Essentially, in the Fourth Circuit, a state university can say anything about a tenured faculty member and strip him of all vestiges of his professional stature and destroy his career without any accountability under the Due Process Clause of the Constitution, so long as he is left on the payroll with no reduction in pay. However, if this case arose in the Eighth or D.C. Circuits, the Petitioner's claim would have survived summary judgment because those circuits recognize that stigma may be actionable, even if the employee is not terminated. Clearly, the Eighth Circuit would find a liberty interest implicated in a situation where allegations of sexual harassment against students were directed at a faculty member whose position as a supervisor brought him in constant contact with students.

C. Liberty Interests in Other Circuits

In the *Winegar* case discussed above, the teacher also alleged an injury to his reputation. In addressing that claim, the Eighth Circuit held that: "An employee's liberty interests are implicated where the employer levels accusations ['of dishonesty, immorality, criminality, racism, and the like'] at the employee that are so damaging as to make it difficult or impossible for the employee to escape the stigma of those charges." 20 F.3d at 899.

In so holding, the Eighth Circuit acknowledged that the "Due Process Clause does not convert the federal courts into arbitral forums for review of those commonplace personnel decision that public agencies routinely make." *Id.* at 901. However, it found that: "These are serious allegations with serious and far-reaching repercussions and Winegar deserved a meaningful chance to confront those allegations." *Id.* at 902.

The D.C. Circuit also construes *Paul v. Davis* more broadly that the Fourth Circuit, as holding that: "Where the government injures a person's reputation and in so doing effects 'a removal, extinguishment, or significant alteration of an interest recognized and protected by … law,' it must give the person his procedural due." *Bartel v. Federal Aviation Administration*, 725 F.2d 1403, 1415 (D.C. Cir. 1984). In *Mosrie v. Barry*, 718 F.2d 1151, 1161 (D.C. 1983), the D.C. Circuit further stated that: "For defamation to give rise to a right to procedural due process, it is necessary – we need not say when it is sufficient – that the defamation be accompanied by a discharge from government employment or at least a demotion in rank and pay."

The D.C. Circuit has also held that under *Roth*, a liberty interest may be implicated if the stigma imposed by the government employer has the broad effect of largely precluding the employee from pursuing her chosen career. *Kartseva v. Department of State*, 37 F.3d 1524 (D.C. Cir.

1994); *Doe v. U.S. Department of Justice*, 753 F.2d 1092 (D.C. 1985).

D. The Need for Clarification and Resolution of the Conflict between the Circuits

There should be no dispute that accusations of sexual harassment, and especially same-sex harassment, are sufficiently stigmatizing to a teacher's reputation, honor, and good name in the community to implicate liberty interests. As discussed above, the Petitioner had a protected property right in his position as Librarian/Music Librarian and it was effectively extinguished when he was removed as Head Librarian and reassigned to a significantly different position. This should constitute the "plus" element sufficient to state a claim.[9]

However, the "plus" should also be met by a general acknowledgement that under the current laws on employer liability and the social and moral atmosphere in contemporary society, publicly branding an educational professional as a sexual harasser effectively forecloses his freedom to take advantage of other employment opportunities in his field and destroys any hope of future employment in his chosen profession.

Sexual harassment has been one of the most important and hotly debated topics in the workplace and academic journals during the last ten years.[10] Under such intense scrutiny, a sexual harassment allegation alone has the effect of tarnishing the image of the accused and the consequences can be severe both professionally and personally[11] because a finding of guilt has consequences tantamount to a criminal conviction.[12] The consequences of sexual harassment allegations are especially problematic for people in the fields of education because their reputations can be irreparably damaged and their careers ruined.[13] Nonetheless, the Court of Appeals overlooked or refused to consider the very real societal and economic consequences of sexual harassment charges in general, and the consequences to Parkman in particular.

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[9] There is also a potential question of whether the written reprimand also constitutes a "plus" since it effectively constituted a "last chance" that placed his tenure in jeopardy. *See Swilley v. Alexander*, 629 F.2d 1018, 1022 n.4 (5th Cir. 1980); *Dunn v. Town of Emerald Isle*, 918 F.2d 955 (4th Cir. 1990) (Table).

As this Court recognized three decades ago in *Roth*, "'[l]iberty' and 'property' are broad and majestic terms. They are among the great constitutional concepts … purposely left to gather meaning from experience … they relate to the whole domain of social and economic fact, and the statesmen who founded this Nation knew too well that only a stagnant society remains unchanged." 408 U.S. at 571. In the thirty years since *Roth* and *Sindermann*, there have been wide, sweeping changes in employment law, including sexual harassment claims.

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[10] *Modeling Subordinate Perceptions of Sexual Harassment: The Role of Superior-subordinate Social-sexual Interaction*, 10 Human Resources Mgmt. Rev. 28 at 238 (2000); Young, Cathy, *Ceasefire!*, 181 (1999); Patai, Daphne, *Heterophobia*, 21 (1998).

[11] *The Neglect of Critical Issues in the Sexual Harassment Discussions: Implications for Organizational and Public Policies*, 4 J.Indiv.Emp.Rts. 263 (1995-95).

[12] LeMoncheck, Linda & Hajdin, Mane, *Sexual Harassment: A Debate, 155 (1997).*

[13] *False Claims of Sexual Harassment in Education: The Path to an Appropriate Remedy for the Wrongly Accused*, 76 Wash. U.L.Q. 1431, 1432 (1998); *Guilty Until Proven Innocent? Protecting the Rights of School District Employees*, Educ. L. Rep., Vol. 5, No. 2, 225 (1996); *Revised Sexual Harassment Guide: Harassment of Students by School Employees, Other Students, or Third Parties*, Dept. of Education, Office of Civil Rights, Part VII, B (Jan. 2001) [www.ed.gov/ocr/shguide].

The Petitioner respectfully suggests that it is time for the Court to revisit and resolve the conflicting decisions on this important question of a tenured employee's liberty interests in his professional reputation.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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November 19, 2002

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United States Court of Appeals,
Fourth Circuit.

Thomas M. PARKMAN, Plaintiff-Appellant,
v.
UNIVERSITY OF SOUTH CAROLINA;
George D. Terry; Bobby Gist; Jennifer R.
Ottervik; Jeffrey R. Whitson, Defendants-Appellees.

No. 01-1596.

Argued April 3, 2002.
Decided Aug. 6, 2002.

Appeal from the United States District Court
for the District of South Carolina, at Columbia.
Joseph F. Anderson, Jr., Chief District Judge.

(CA- 99-579-3-17).

ARGUED: Herbert Wiley Louthian, Jr., Louthian Law Firm, P.A., Columbia, South Carolina, for Appellant. Kathryn Thomas, Gignilliat, Savitz & Bettis, L.L.P., Columbia, South Carolina, for Appellees. ON BRIEF: Deborah R.J. Shupe, Louthian Law Firm, P.A., Columbia, South Carolina, for Appellant.

Before WILKINS and MICHAEL, Circuit Judges, and
HAMILTON, Senior Circuit Judge.

Affirmed by unpublished PER CURIAM opinion.

OPINION

PER CURIAM.

On January 28, 1999, Thomas Parkman (Parkman), formerly the Head Librarian at the University of South Carolina's Music Library (the Music Library), commenced this action in South Carolina state court against the University of South Carolina (the University), two University officials, and two University employees assigned to the Music Library. The defendants timely removed the action to the United States District Court for the District of South Carolina on the basis of federal question jurisdiction. Among other claims, Parkman's complaint alleged claims for violation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution, violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, and civil conspiracy under South Carolina common law.

Parkman's claims arose in part from disciplinary action taken against him by George Terry (Dean Terry), the University's Vice Provost and Dean of Libraries and Information Systems. The disciplinary action stemmed from gender discrimination allegations asserted against Parkman by Jennifer Ottervik (Ottervik), Parkman's assistant, and sexual harassment allegations asserted by Jeffrey Whitson (Whitson), a graduate student assistant in the Music Library. The discipline imposed upon Parkman followed an investigation by the University's Equal Opportunity Programs Office (the EOP Office), which was then headed by Bobby Gist (EOP Director Gist), which investigation resulted in determinations by EOP Director Gist unfavorable to Parkman.

Parkman brought this action against the University, Dean Terry, EOP Director Gist, Ottervik, and Whitson (collectively the Defendants). The two chief underlying premises of Parkman's complaint were: (1) that Ottervik and Whitson fabricated their allegations against him for their own professional gain, and (2) that the University, through its officials, denied him a fair opportunity to respond to the allegations. Notably, although the University employed Parkman as a tenured librarian at the time he commenced this action, he voluntarily retired from the University for medical reasons prior to the completion of most of the proceedings in the district court.

This appeal comes to us following the district court's grant of summary judgment in favor of the Defendants with respect to all claims. We will later specify the particular claims which Parkman presses on appeal. With respect to the claims presented on appeal, the judgment of the district court is affirmed.

I.

A. Parkman's Professional and Educational Background

Parkman began his career at the University in September 1972 as a paraprofessional library assistant in the undergraduate library.[1] Based upon his excellent performance in this position, in 1976 Parkman was promoted to a supervisory position in the Music Library. After Parkman received his library science degree in 1982, he was promoted to the position of Head Music Librarian, a tenure track position. He obtained tenure status in 1988. As a tenured faculty member, Parkman was entitled to certain procedural safeguards designed to protect his tenure status. Parkman's annual performance evaluations for 1988, 1989, and 1990 overall were very positive. In addition to his duties as Head Music Librarian, Parkman also taught music bibliography courses in the University's music school.

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[1] Because this case is on appeal from the grant of the Defendants' motion for summary judgment, we view all facts and reasonable inferences therefrom in the light most favorable to Parkman. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587-88, 106 S.Ct. 1348, 89 L.Ed.2d 538 (1986).

B. The 1992 Allegations of Male-on-Male Sexual Harassment

In late March 1992, a student assistant in the Music Library tendered his resignation on the basis that Parkman had allegedly subjected him to sexual harassment. Parkman adamantly denied the allegations. Even though the student assistant never filed a formal complaint with the University, the University nonetheless placed a series of written reprimands in Parkman's personnel file regarding the allegations. Following Parkman's appeal of each reprimand and negotiations between Parkman and the University, in June 1992, the University agreed to remove all reprimands from Parkman's personnel file and issue him a warning letter instead. The warning letter acknowledged that an informal complaint of sexual harassment had been lodged against Parkman but made no findings regarding the complaint's validity. The University also agreed to purge from Parkman's personnel file all other documents regarding the informal complaint and the University's investigation of the matter.

C. Ottervik Arrives on the Scene

In January 1995, the University hired Ottervik as Parkman's assistant. The University hired Ottervik despite Parkman's prediction that he and Ottervik would not work well together. Parkman's prediction turned out to be accurate, because soon after Ottervik started work, personality differences developed between Ottervik and Parkman, as well as drastic differences between their opinions regarding the operation of the Music Library.

From February to July 1995, Ottervik kept notes about events in the Music Library involving Parkman. In June 1995, Ottervik wrote a memorandum to Parkman's immediate supervisor, Alan Stokes (Stokes), regarding her work- related problems with Parkman, and outlining her proposals for a division of labor between them. Neither of these documents referenced sexual harassment.

Between June and August 1995, Ottervik learned about the 1992 sexual harassment allegations against Parkman.[2] Thereafter, some of the student assistants in the Music Library improperly used the Music Library's computers to access internet websites containing pornography. Ottervik and Parkman vehemently disagreed about how to prevent such improper use in the future.

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[2] Notably, Dean Terry admitted that even though the University agreed to remove all records, except the warning letter, from its files regarding the 1992 allegations, the two University officials who conducted the investigation of the allegations kept copies of the documents in their "personal" files in the event the alleged victim filed a lawsuit against the University.

D. Ottervik's October 1995 EOP Charging Document

On October 27, 1995, Ottervik filed a charging document against Parkman with the University's EOP Office, alleging: (1) that Parkman had failed to take any remedial action regarding the improper use of the Music Library's computers to electronically access pornography; (2) Parkman had called her "stupid" and a "power hungry bitch"; (3) Parkman had treated her less favorably than her male coworkers; and (4) Parkman had made numerous sexual advances toward male students and student assistants in the Music Library. (J.A. 425). The charging document did not contain any names, dates, or other specifics as to either Parkman's alleged discriminatory treatment of Ottervik or his alleged sexual advances toward male students and student assistants. Nonetheless, the charging document contained a list of six witnesses: Cathy Hewitt, Jeff Whitson, Maureen Albright, Debby Dyck, Stephanie Dillard, and Anthony Marotta.

Parkman received the charging document (with the witness list deleted) on October 31, 1995. The charging document was accompanied by a cover letter from EOP Director Gist specifically instructing Parkman not to discuss the charging document with any member of the faculty, staff, or student body, which discussions he declared may be considered as retaliation that would adversely impact the outcome of his office's investigation.

By letter dated November 8, 1995, EOP Director Gist requested that Parkman formally respond to the charging document filed by Ottervik, including identifying any witnesses that he believed would testify in his favor. As of this date, the University still had not provided Parkman with any specifics regarding the allegations against him, the names of any witnesses to his alleged misconduct, or the substance of any witness statements.

E. Whitson's November 1995 EOP Charging Document

Also on November 8, 1995, Whitson filed a charging document against Parkman in which he contended that from January through October 1995 Parkman had physically touched him against his will, made sexually suggestive comments to him, and referred to Ottervik and another employee in the Music Library as "power hungry bitches" in his presence. (J.A. 428). At the time Whitson filed his charging document, he worked in the Music Library. Specifically, he was a graduate student assistant to the music cataloger, who happened to be a friend of Ottervik.

On November 9, 1995, Parkman received the charging document filed by Whitson. Again, the University did not provide Parkman with the names of any witnesses to his alleged misconduct or the substance of any witness statements. The University again instructed Parkman not to contact faculty, staff, or students regarding the matter.

F. Parkman Files Written Response to Ottervik's October 1995 EOP Charging Document

Parkman filed a written response to Ottervik's charging document in which he explained his side of the internet incident and emphatically denied that he ever engaged in unprofessional conduct or made sexual advances toward male students or student assistants. Parkman also requested the names, addresses, and telephone numbers of all witnesses against him, copies of any witness statements, and all other information collected by the University regarding the matter.

G. Parkman Temporarily Reassigned/Ottervik Promoted

On November 10, 1995, Dean Terry temporarily reassigned Parkman, without a reduction in his pay or benefits, to a special project related to, but outside, the Music Library (the Special Projects Librarian position). The project was to continue until Ottervik and Whitson's allegations were "thoroughly investigated ... and some resolution of th[e] matter [wa]s accomplished." (J.A. 277). Dean Terry specifically directed Parkman "not to communicate with any full-time or student employees of the Music Library until th[e] investigation [wa]s completed." (J.A. 277, 659).

Upon Parkman's reassignment from the Music Library, Ottervik assumed his duties, and became the de facto Head Music Librarian. Within a few months of assuming this position, Ottervik fired the technical assistant who had worked for Parkman, and promoted Whitson to the position. In January 1997, the University officially promoted Ottervik to the position of Head Music Librarian.

H. Parkman Files Written Response to Whitson's November 1995 EOP Charging Document

Parkman responded in writing to Whitson's charging document on November 10, 1995. Again, Parkman emphatically denied all allegations of improper conduct. Parkman also requested a list of witnesses, copies of witness statements, and all other investigative material regarding Whitson's allegations.

By letter dated November 15, 1995, EOP Director Gist advised Parkman that he had five days from receipt of the letter to provide "the names, addresses and phone numbers of any persons [he] would like for the EOP Office to interview on [his] behalf...." (J.A. 280). While demanding information from Parkman, however, EOP Director Gist still provided no information regarding the identity of any witnesses against Parkman, or the substance of their statements.

I. Farley Resigns In Protest of Ottervik and Whitson's Allegations Against Parkman

On November 21, 1995, John Farley, the night manager of the Music Library, resigned his position in protest of Ottervik and Whitson's allegations against Parkman. In his letter of resignation, Farley stated that he had worked for Parkman for two and one-half years and had never observed any conduct by Parkman that resembled sexual harassment. He characterized Ottervik and Whitson's allegations as unfounded, unethical, and motivated by personal malice.

J. EOP Letter Determinations

By letter dated December 14, 1995, EOP Director Gist informed Parkman that his office's investigation was complete, but that Parkman could still present any documentation or witness statements to support his position. EOP Director Gist proposed that Parkman accept a permanent reassignment without supervisory authority, attend a sexual harassment training program, and receive a formal letter of reprimand. By letter dated December 19, 1995, Parkman, through his attorney, reasserted his innocence and rejected EOP Director Gist's proposal.

On January 26, 1996, Parkman received the EOP Office's formal "Letter Determinations" with respect to both Ottervik and Whitson's charging documents. These Letter Determinations stated that Parkman had violated the University's sexual harassment policy. In support, they generally cited "the supporting testimony of a multitude of witnesses," but specifically listed no witnesses by name. (J.A. 319, 326). The Letter Determinations also cited the 1992 allegations against Parkman, noting that those allegations were "strikingly similar" to Ottervik and Whitson's allegations. (J.A. 320, 327).

Neither Letter Determination complied with the University's sexual harassment policy nor the EOP Office's investigation procedures. Specifically, they did not provide any details of Parkman's alleged misconduct, include the names of witnesses interviewed or summaries of their statements, nor provide a chronology of the investigation. Rather, the Letter Determinations essentially stated as established fact the same vague allegations contained in Ottervik and Whitson's charging documents.

Under the University's sexual harassment policy, the Letter Determinations were merely recommendations to Dean Terry, who could order further investigation, invoke sanctions, or determine independently that no sanctions were warranted. The policy specifically left in full force and effect all grievance procedures available to Parkman pursuant to other University policies and applicable law.

The EOP Office procedures provided for a Presidential Review of the Letter Determinations, which consisted of review by a three-member panel appointed by the University President. During such a review, the EOP Office was merely required to "present the rationale for its recommendations findings [sic]." (J.A. 306). While the charged party could be present during that presentation, questioning of witnesses would be at the discretion of the review panel, and conducted solely by members of the panel. Further, even though the review panel could request additional information from the EOP Office, nothing in the review process afforded Parkman access to that information prior to appearing before the panel.

Under the University's policies, however, Parkman retained his right under the Faculty Manual to use the faculty grievance procedures in the event he was disciplined for misconduct. Those procedures provided for review by the Faculty Grievance Committee, which could conduct a hearing and specifically address due process issues.

K. Dean Terry Reprimands And Permanently Reassigns Parkman

The Letter Determinations were submitted to Dean Terry for review and decision regarding appropriate action. On February 14, 1996, Dean Terry issued a written reprimand to Parkman, finding that Parkman had violated the University's sexual harassment policy, which Dean Terry "deemed to be misconduct related directly and substantially to [Parkman's] fitness as a faculty member." (J.A. 330). The reprimand further stated that "[a]ny future violations of this nature will be considered as an additional incident of misconduct related directly and substantially to [his] fitness as a faculty member and will result in a recommendation that tenure revocation proceedings be initiated." Id. Dean Terry also required that Parkman attend sexual harassment prevention training and permanently reassigned him to the Special Projects Librarian position he had assumed in November 1995. From this point forward, we will refer to Dean Terry's response to the Letter Determinations as the February 1996 Reprimand/Reassignment.

L. Parkman Formally Appeals Dean Terry's February 1996 Reprimand/Reassignment Through the Faculty Grievance Procedure

On February 28, 1996, Parkman formally requested, pursuant to the University's Faculty Manual, that Dean Terry withdraw the February 1996 Reprimand/Reassignment, based in part on the denial of his procedural due process rights. By letter dated March 6, 1996, Dean Terry denied the request. Parkman then appealed the February 1996 Reprimand/Reassignment via the faculty grievance procedures set forth in the University's Faculty Manual through the level of University Provost and University President. Notably, in Parkman's respective letters to Vice President for Academic Affairs and Provost Winona Vernberg and President John Palms requesting review of the February 1996 Reprimand/Reassignment, Parkman did not seek review pursuant to the University's sexual harassment policy nor EOP Office procedures.

Following the University Provost and the University President's denials of his respective appeals, Parkman appealed to the Faculty Grievance Committee. Appearing before the Faculty Grievance Committee on October 9, 1996, Parkman testified on his behalf, presented written statements from twenty-seven witnesses, and live testimony from two witnesses, including Farley. Dean Terry attended the meeting, heard Parkman's case, and testified himself.

M. Decision of the Faculty Grievance Committee

Based upon the EOP Office's documents, as well as the testimony and statements presented at the meeting, the Faculty Grievance Committee concluded that the EOP Office violated Parkman's procedural due process rights by refusing to provide him with the names and statements of the witnesses against him. The Faculty Grievance Committee further concluded that the EOP Office had improperly considered the 1992 allegation of sexual harassment, which Dean Terry confirmed had been "resolved in [Parkman's] favor." (J.A. 353).

The Faculty Grievance Committee referred the case to the University's general counsel, with instructions to mediate the matter with Parkman's attorney. The Faculty Grievance Committee further ordered that if mediation proved unsuccessful, the whole case should be remanded to the EOP Office for reinvestigation in accordance with proper procedures.

N. Attempted Mediation

Between November 19, 1996, and January 31, 1997, Parkman's attorney attempted to mediate with the University, but with no success. On January 31, 1997, the University's general counsel refused to reconsider Parkman's reassignment, but offered to substitute a different written reprimand in Parkman's file, which was essentially the same as the original reprimand.

O. Action of the Board of Trustees' Academic Affairs Committee

Pursuant to the faculty grievance procedures, Parkman pursued the matter to the University's Board of Trustees' Academic Affairs Committee. By letter dated June 12, 1997, the Committee's Chairman reiterated the Faculty Grievance Committee's directives. If mediation proved unsuccessful, the matter was to be "remanded to the EOP Office for investigation in accordance with the appropriate University policy and procedure," which would "preserve [Parkman's] procedural due process rights as outlined in the Faculty Manual." (J.A. 367- 368).

P. More Mediation Attempts

After further mediation attempts failed, Parkman filed a charging document with the EOP Office alleging that Ottervik had violated the University's sexual harassment policy and engaged in abuse of process. In support, Parkman submitted a detailed, sworn statement from Farley, dated June 18, 1997, indicating that Ottervik had made numerous disparaging remarks about Parkman in Farley's presence, including calling Parkman "a faggot, a bastard and a son of a bitch." (J.A. 380). EOP Director Gist refused to investigate Parkman's allegations on the ground that Parkman's charging document did not "meet the standards for the acceptance of a complaint of sexual harassment or abuse of the Sexual Harassment Policy," (J.A. 396), and therefore, the EOP Office lacked jurisdiction. To date, Parkman's appeals of this decision to the University Provost and Board of Trustees remain unanswered.

Q. More Activities of the EOP Office

After Parkman refused the University's mediation offer, EOP Director Gist requested a meeting with the Faculty

Grievance Committee "to clarify what he need[ed] to do differently in an upcoming re-investigation to avert subsequent re-investigation activities." (J.A. 411). On February 27, 1998, over one year after expressly directing the University to afford Parkman his procedural due process rights, the Faculty Grievance Committee held another meeting regarding Parkman's case. On March 25, 1998, the Committee again found that the University had denied Parkman his procedural due process rights by refusing to provide him with specific details of the charges against him and the names and statements of witnesses against him. The Committee also specifically determined that such information should be given to Parkman during the reinvestigation.

On April 16, 1998, over two years after concluding its initial investigation of Ottervik and Whitson's charging documents, the EOP Office sent Parkman a list of witness names. The list did not include the addresses or telephone numbers of any witnesses, nor the substance of any witness statements. Parkman then sent the University a list of thirty-three witnesses on his behalf, most of whom had already submitted written statements that were provided to the University in October 1996, and he again requested any witness statements or interview reports from the EOP Office's investigation.

By letter dated May 17, 1998, the EOP Office indicated that it could find only eight of Parkman's witnesses in the University's 1998 directories. Since the other witnesses were not in the University's 1998 *615 listings, the EOP Office expressed concern that Parkman's witnesses did not have first-hand knowledge regarding the 1995 allegations against Parkman, and it was purportedly "very hesitant to go and seek out these people ... and educate them as to the particulars of the complaints." (J.A. 435).

R. The Present Lawsuit

In October 1998, Parkman, by letter, notified the University's Board of Trustees' Academic Affairs Committee of his belief that the EOP Office was still failing to act as directed by the Academic Affairs Committee and the Faculty Grievance Committee. Without receiving a response to his letter, Parkman commenced the present action in South Carolina state court on January 28, 1999. The Defendants removed the action to federal court on the basis of federal question jurisdiction. 28 U.S.C. S 1331. The complaint alleged: (1) a breach of employment contract claim against the University under South Carolina common law; (2) a conspiracy claim against the Defendants under South Carolina common law; (3) an invasion of privacy claim against the Defendants under South Carolina common law; (4) violation of the Due Process Clause brought under 42 U.S.C. S 1983 against the Defendants; (5) violation of the Equal Protection Clause brought under §1983 against the Defendants; (6) a statutory civil conspiracy claim brought under § 1985 against the Defendants; (7) an intentional infliction of emotional distress claim against the Defendants under South Carolina common law; and (8) a claim for injunctive relief against the University, requesting that the University be ordered to require its policies and procedures to be written and enforced so as to afford due process and equal protection rights to tenured faculty members and others who are accused of sexual harassment. As previously stated, Parkman voluntarily retired from the University for medical reasons prior to the completion of most proceedings in the district court.

Following the completion of discovery, the Defendants moved for summary judgment with respect to all claims. The district court granted the Defendants' motion in toto. This appeal followed. On appeal, Parkman challenges the district court's grant of summary judgment in favor of the Defendants with respect to all claims except his claim against the Defendants under the Equal Protection Clause, his claim against the University and Dean Terry for intentional infliction of emotional distress, and his claim against Dean Terry for invasion of privacy.

II.

Summary judgment is appropriate when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." > Fed.R.Civ.P. 56(c). "We review a grant of summary judgment de novo, applying the same standard as the district court." Baber v. Hospital Corp. of Am., 977 F.2d 872, 874 (4th Cir.1992). In so doing, we view all facts and reasonable inferences therefrom in the light most favorable to the nonmoving party. Matsushita Elec. Indus. Co., 475 U.S. at 587-88.

III.

Parkman first contends the district court erred in granting summary judgment in favor of the Defendants with respect to his claim alleging the Defendants violated his procedural due process rights as guaranteed by the Due Process Clause of the Fourteenth Amendment. Parkman's contention is without merit.

The Due Process Clause of the Fourteenth Amendment provides that: "nor shall any State deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV, S 1. Boiled down to the essentials, Parkman's procedural due process claim alleges that his reprimand and reassignment to the Special Projects Librarian position, without being afforded details of the allegations against him, the ability to contact adverse witnesses, and a hearing at which he could effectively cross examine his accusers and adverse witnesses, deprived him of his property interest in the position of Head Music Librarian and his liberty interests in his personal and professional reputation and future employment opportunities.

In rejecting Parkman's procedural due process claim, the district court concluded that although the evidence presented a jury issue as to whether Parkman was afforded procedural due process in connection with the allegations in Ottervik and Whitson's charging documents, Parkman could not show that he was deprived of a protected property or liberty interest given that his reassignment did not include tenure revocation nor a reduction in his pay. We agree with the district court.

A. *Property Right*

The district court properly determined that Parkman has not established that he was deprived of a property interest protected by the Due Process Clause. Our relevant circuit precedent is not favorable to Parkman. In Huang v. Board of Governors, 902 F.2d 1134 (4th Cir.1990), we rejected a procedural due process challenge by a full tenured professor to an interdepartmental transfer on the basis that the transfer of a tenured professor from one department to another, without loss of rank or pay, does not implicate any property interest protected by the Due Process Clause. Id. at 1142. We recognized that our position was consistent with that of the Fifth and Sixth Circuits, which had already held that "certain intra-departmental demotions do not implicate property interests subject to procedural due process protection." Id. (citing Garvie v. Jackson, 845 F.2d 647, 651 (6th Cir.1988) (demotion from department chairman to professor not a denial of a protected property interest); Kelleher v. Flawn, 761 F.2d 1079, 1087 (5th Cir.1985) (reduction of graduate student's teaching duties is not denial of a protected property interest)).

Moreover, in a case subsequent to Huang, we characterized our holding in Huang as follows: "The constitutionally protected property interest in employment does not extend to the right to possess and retain a particular job or to perform particular services." Fields v. Durham, 909 F.2d 94, 98 (4th Cir.1990); contra Winegar v. Des Moines Indep. Cmty. Sch. Dist., 20 F.3d 895, 900-01 (8th Cir.1994) (recognizing that industrial arts teacher with a nineteen-year clean record at the same high school had a property interest protected by the Due Process Clause in his particular assignment to that same high school). In Fields, we went on to explain that "the property interest is more generally in continued employment, and no deprivation exists so long as the employee receives payment of the full compensation due under the contract." Id. (internal quotation marks omitted).

Here, Parkman's reassignment from the Head Music Librarian position to the Special Projects Librarian position left his tenure status and rate of compensation completely intact. Furthermore, while it is true that his new position did not entail supervisory responsibilities as did his former position, our circuit precedent is quite clear that a public employee such as Parkman does not have a property right protected by the Due Process Clause to perform certain services. Fields, 909 F.2d at 98; Huang, 902 F.2d at 1141-42. Under these circumstances, application of our circuit precedent establishes that Parkman's procedural due process claim based upon his position as Head Music Librarian fails. Accordingly, we affirm the district court's grant of summary judgment in favor of the Defendants in this regard.

B. *Liberty Interest*

Parkman contends the district court erred by granting summary judgment in favor of the Defendants with respect to his procedural due process claim alleging deprivation of his asserted liberty interests in his personal and professional reputation and future employment opportunities. As the district court concluded, the claim is foreclosed by our decision in Johnson v. Morris, 903 F.2d 996, 999 (4th Cir.1990).

In Johnson, the plaintiff, a public employee who had been demoted and transferred for alleged misconduct on the job, alleged that his employer's public announcement of the reasons for his demotion without notice and an opportunity to be heard deprived him of his liberty interests in his reputation and future career opportunities in violation of the Due Process Clause. Id. at 998. Following a bench trial, the district court entered judgment in favor of the plaintiff on the claim. Id.

On appeal, we reversed on the ground that no protectable liberty interest was implicated by the public announcement of the reasons for the plaintiff's demotion. Id. at 1000. In this regard, we held that "for a liberty interest to have been implicated, some damage to [the plaintiff's] employment status must have resulted from publication of the reasons for his demotion." Id. at 999. Because the plaintiff remained employed by his public employer, we concluded that he suffered no damage to his employment status and could not be heard to complain that he had been made unemployable as the result of the publication. Id. We also concluded that any harm to the plaintiff's chances for career advancement with his public employer did not result from the publication of the reasons for his demotion, but from the reasons for the demotion itself. Id. at 999-1000.

In the present case, like the plaintiff in Johnson, Parkman remained employed by his public employer after the public announcement of the reasons for the February 1996 Reprimand/Reassignment. Accordingly, he suffered no damage to his employment status and cannot be heard to complain that he has been made unemployable. Furthermore, any harm that came to Parkman's chances for career advancement with the University did not result from the publication of the reasons for the February 1996 Reprimand/Reassignment, but from the reasons for such action. In short, Parkman cannot establish that he has been deprived of a liberty interest protected by the Due Process Clause, and therefore, we affirm the district court's grant of summary judgment in favor of the Defendants with respect to Parkman's claim alleging the Defendants deprived him of his liberty interests in his personal and professional reputation and future career opportunities.

IV.

Parkman next contends the district court erred in granting summary judgment in favor of the University with respect to his breach of employment contract claim. We affirm.

With respect to this claim, the district court first concluded that a jury could reasonably find from the evidence that the University materially breached numerous aspects of Parkman's employment contract (as reflected in the University's policies and procedures). Specifically, in this regard, the district court stated:

> A jury could certainly conclude that various actions and inactions by the EOP were material breaches of the terms of the contracts because they resulted in fundamental unfairness in the EOP investigation. Specifically, a jury could reasonably conclude that: (1) plaintiff never had adequate notice of the precise charges against which he was required to defend; (2) no effort was made to limit the charges considered to the strict 180 day pre-complaint time frame imposed by the relevant procedures (and corresponding law); (3) plaintiff was hampered in his defense both by being denied notice of the complainants' witnesses and being precluded from speaking with any student or employee who might be able to testify in his favor; (4) no similar limitation was imposed on the complainants; (5) the EOP assumed an impermissible adversarial role rather than seeking, impartially, to investigate the matter; (6) the EOP considered impermissible information (most particularly the 1992 allegations) and failed to consider proper information, or at least to document properly what information was considered (no chronology of the investigation or

> summary of witness statements was prepared or included); and (7) the EOP compounded the failings in their process by failing to properly document their investigation and share that information with plaintiff for his use in the appeal process.

(J.A. 672-73) (internal footnote omitted). Despite the district court's well supported determination that material breaches of the terms of the documents that constituted Parkman's employment contract were breached by the University, the district court concluded that Parkman could not prevail on his breach of employment contract claim because he had no legally compensable contractual damages. In this regard, the district court reasoned:

> As plaintiff received a remand, and that remand remained open at the time this action was filed, there is no finding against plaintiff by the EOP (the original finding having been mooted by the remand itself). Thus, while the process had its significant failings, the court finds that there are no legally compensable contractual damages.

(J.A. 675). In other words, the district court concluded that summary judgment was warranted on Parkman's breach of employment contract claim because his case was remanded for reinvestigation, which reinvestigation was still pending when Parkman commenced the present action.

On appeal, Parkman takes issue with the district court's reasoning on the basis that the district court ignored evidence that the University never made a good faith effort to comply with the Faculty Grievance Committee's instructions, either through mediation or reinvestigation. Parkman's argument is without merit. Critically, the argument ignores the undisputed fact that the Board of Trustees' Academic Affairs Committee also ordered the EOP Office to reinvestigate the complaints against Parkman. In other words, the University itself attempted to take corrective action to ensure that Parkman received a fair procedural process before the EOP Office. Relatedly, we hold that the district court was eminently correct that Parkman has shown no compensable damages as a result of the EOP Office's botched handling of Ottervik and Whitson's charging documents. The matter being on remand, no determination adverse to Parkman was still in existence at the time that Parkman filed the present action. In sum, we hold the district court properly granted summary judgment in favor of the University with respect to Parkman's breach of employment contract claim.[3]

V.

Next, we address Parkman's challenge to the district court's grant of summary judgment in favor of Ottervik and Whitson with respect to his claims for intentional infliction of emotional distress and invasion of privacy. The district court granted summary judgment in favor of Ottervik and Whitson with respect to these claims on the ground that the claims were barred by the applicable statute of limitations.

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[3] While we do affirm the district court's grant of summary judgment in favor of the University with respect toParkman's breach of employment contract claim, we desire to express our strong disdain for the poor manner in which the EOP Office conducted its investigation of Ottervik and Whitson's charging documents. We certainly expect better from our public officials.

Parkman vigorously argues that summary judgment was inappropriate because the evidence raises genuine issues of material fact regarding when his claims accrued against Ottervik and Whitson for intentional infliction of emotional distress and invasion of privacy.

It is undisputed that the three-year statute of limitations provided under South Carolina law, S.C.Code Ann. § 15-3-530 (Law.Co-op.Supp.2001), governs these claims. Therefore, summary judgment with respect to both claims was proper if both accrued before January 28, 1996.

On appeal, Parkman contends that his claims are not based on the allegations contained in the charging documents that Ottervik and Whitson filed with the EOP Office. Rather, he asserts that his claims are based upon allegations that Ottervik and Whitson conspired with the University to build a case against him, prevent him from having any meaningful opportunity to respond to the sexual harassment charges, invade his privacy by publicizing those charges, and ultimately ruin his professional standing. According to Parkman, his claims against Ottervik and Whitson did not accrue until February 14, 1996, when Dean Terry issued him the February 1996 Reprimand/Reassignment.

We conclude that the district court correctly granted summary judgment in favor of Ottervik and Whitson with respect to Parkman's claims for invasion of privacy and intentional infliction of emotional distress on the basis that those claims are barred by the applicable statute of limitations. As the district court insightfully stated:

> Parkman conceded in his deposition that Ottervik and Whitson had not done anything to harm him after

> January 26, 1996. They had made their charges against him, which Parkman considered slanderous at the time he received them, and he suffered the resulting humiliation of being temporarily reassigned by November 1995. As such, he knew he had a cause of action against Ottervik and Whitson in 1995, more than three years before he commenced this action.

(J.A. 670). We affirm on the reasoning of the district court.[4]

VI.

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[4] The district court also disposed of Parkman's claims against Ottervik and Whitson for violation of the Due Process Clause of the Fourteenth Amendment, common law civil conspiracy and statutory civil conspiracy under § 1985 on the ground that the claims were barred by the applicable three-year statute of limitations. We have already affirmed the district court's grant of summary judgment in favor of Ottervik and Whitson with respect to Parkman's claim alleging violation of the Due Process Clause of the Fourteenth Amendment, Part III supra. Accordingly, we need not and do not address that claim against Ottervik and Whitson on statute of limitations grounds. Furthermore, we need not and do not address on statute of limitations grounds whether the district court properly granted summary judgment in favor of Ottervik and Whitson with respect to Parkman's claims for common law civil conspiracy and statutory civil conspiracy under §1985. As we will explain in the immediately following part of this opinion, Part VI infra, Parkman's claims against Ottervik and Whitson for common law civil conspiracy and statutory civil conspiracy under § 1985 clearly fail on the merits.

We next address Parkman's claims for common law civil conspiracy and statutory civil conspiracy under § 1985 against the Defendants on the merits.

A. *Common Law Civil Conspiracy*

Under South Carolina common law, a claim for civil conspiracy requires three elements: (1) a combination of two or more persons; (2) for the purpose of injuring the plaintiff; (3) which causes the plaintiff special damages. Lawson v. S.C. Dep't of Corrections, 340 S.C. 346, 532 S.E.2d 259, 261 (2000). This third element required Parkman to allege and prove damages that occurred as a result of the alleged conspiracy itself, in addition to any damages alleged as a result of any other claims. Vaught v. Waites, 300 S.C. 201, 387 S.E.2d 91, 95 (App.1989). That is, the damages allegedly resulting from the conspiracy must not overlap with or be subsumed by the damages allegedly resulting from the other claims.

Fatal to Parkman's claim for common law civil conspiracy against the Defendants is the fact that he has not alleged nor proven any special damages in connection with the claim as required under South Carolina law. Rather, he merely realleges the same damages that he had already alleged in association with all of his other claims. On this basis, we affirm the district court's grant of summary judgment in favor of the Defendants with respect to his claim against the Defendants for common law civil conspiracy.[5]

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[5] The district court granted summary judgment in favor of the University, Dean Terry, and EOP Director Gist with respect to Parkman's claim for common law civil conspiracy on the

B. *Statutory Civil Conspiracy under § 1985*

Simply stated, Parkman's claim for statutory civil conspiracy under § 1985 alleged that the Defendants conspired to violate his Fourteenth Amendment right to due process of law before he could be deprived of his alleged property interest in his position as Head Music Librarian. As we previously explained in Part III, supra, Parkman does not have a constitutionally protected property interest in his position as Head Music Librarian. As such, his statutory civil conspiracy claim under § 1985 cannot be sustained. On this basis, we affirm the district court's grant of summary judgment in favor of the Defendants with respect to Parkman's claim for statutory civil conspiracy under § 1985.

VII.

The next issue on appeal is whether the district court erred in granting summary judgment in favor of EOP Director Gist with respect to Parkman's claim for intentional infliction of emotional distress. The issue is easily resolved in favor of EOP Director Gist.

Parkman's claim for intentional infliction of emotional distress against EOP Director Gist requires him to establish a number of elements, including that EOP Director Gist's conduct was so extreme and outrageous that it exceeded all

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ground that the intracorporate conspiracy doctrine barred the claim. Because we affirm the disposal of the claim against these defendants on a different ground, we need not and do not address the propriety of the district court's application of the intracorporate conspiracy doctrine.

possible bounds of decency and must be regarded as atrocious and utterly intolerable in a civilized community. Fleming v. Rose, 338 S.C. 524, 526 S.E.2d 732, 739 (App.2000). Proof of this element generally requires proof of hostile or abusive encounters or coercive or oppressive abuse by the defendant. Id. at 739-40. For example, in McSwain v. Shei, 304 S.C. 25, 402 S.E.2d 890 (1991), the South Carolina Supreme Court held that a jury could find outrageous and intolerable the conduct of an employer who forced the plaintiff employee to perform exercises in public that exposed her incontinence problem to others. Id. at 892.

The only conduct of EOP Director Gist alleged by Parkman to have occurred within the applicable three-year statute of limitations period (January 28, 1996 to January 28, 1999) was EOP Director Gist's failure to follow through with a prompt reinvestigation of Ottervik and Whitson's charging documents as ordered by the Faculty Grievance Committee and the Board of Trustees' Academic Affairs Committee. Such conduct falls far short of conduct that exceeds all bounds of decency. Moreover, while EOP Director Gist's heel dragging with respect to the ordered reinvestigation was extremely unprofessional, it cannot be regarded as utterly atrocious or intolerable in a civilized society. In sum, we affirm the district court's grant of summary judgment in favor of EOP Director Gist with respect to Parkman's claim for intentional infliction of emotional distress.[6]

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[6] The district court disposed of this claim against EOP Director Gist on the ground that the South Carolina Workers' Compensation Law pre- empted it. Because we affirm the district court's grant of summary judgment in favor of EOP Director Gist on a different ground, we express no opinion

VIII.

We now consider whether the district court erred in granting summary judgment in favor of the University and EOP Director Gist with respect to Parkman's claim for invasion of privacy. We hold the district court did not so err and affirm on the reasoning of the district court.

Parkman bases his invasion of privacy claim against the University and EOP Director Gist upon his allegation that they publicized his private affairs without any legitimate public concern. Rycroft v. Gaddy, 281 S.C. 119, 314 S.E.2d 39, 42 (App.1984) (stating that South Carolina recognizes common law cause of action for invasion of privacy based upon the publicizing of private affairs with no legitimate public concern). On this topic, the district court stated:

> Parkman testified at his deposition that Bobby Gist invaded his privacy by "accept[ing] without any questions or skepticism a series of fraudulent accusations about me, about my life, about my lifestyle, about the way I behave." [Parkman Depo. pp. 186-87]. These allegations do not support an invasion of privacy claim. The only allegation which might go to the issue of publication of private affairs by Gist is the EOP's apparent decision, as evidenced by the EOP report, to contact witnesses not listed by the parties. No record has, however, been offered to support a claim that plaintiff's injuries flow from this contact. Thus, Bobby Gist is entitled to summary judgment on this claim.

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on the correctness of the ground relied upon by the district court.

> * * *
>
> The University is also entitled to summary judgment on the claim of invasion of privacy. Parkman vaguely alleges only that the University "aided and abetted this whole process." [Parkman Depo. p. 181]. The actions of the University after the EOP issued its initial Letter of Determination have been limited to receiving and responding to Parkman's complaints and appeals. No evidence has been offered of invasion of privacy by the University or its employees acting on behalf of the University within the relevant period.

J.A. 678) (alteration and brackets in original).

We discern no flaws in the district court's analysis. Indeed, Parkman fails to point us to even a single citation in the joint appendix in support of his claim for invasion of privacy against the University and EOP Director Gist. We wholeheartedly agree with the overall sentiment of the district court that Parkman based the claim solely upon speculation. We affirm on the reasoning of the district court.

IX.

Lastly, we consider whether the district court erred in granting summary judgment in favor of the University with respect to Parkman's claim for injunctive relief. In his claim for injunctive relief, Parkman sought an injunction that ordered the University to require that its policies and procedures regarding gender discrimination and sexual harassment be written and enforced so as to afford due process and equal protection to tenured faculty members and others who have been accused of engaging in such misconduct.

Given the fact that by the time the district court ruled on the Defendants' summary judgment motion, Parkman had voluntarily retired from the University, the district court disposed of Parkman's claim for injunctive relief on the ground of mootness. On appeal, Parkman argues that his claim for injunctive relief is not moot because the record fails to contain any evidence suggesting that he will not seek reemployment with the University or future employment elsewhere. He also argues that his claim is not moot because the fact that the University sought to remove all documentation from his personnel record as part of its mediation efforts suggests that his personnel file still contains the 1996 Reprimand/Reassignment.

We hold the district court did not err in granting summary judgment in favor of the University with respect to Parkman's claim for injunctive relief. As a plaintiff seeking injunctive relief, Parkman had the stiff burden of showing that he was currently under imminent threat of suffering further harm in the absence of the injunctive relief that he sought. Connecticut v. Massachusetts, 282 U.S. 660, 674, 51 S.Ct. 286, 75 L.Ed. 602 (1931) (stating that an injunction "will not be granted against something merely feared as liable to occur at some indefinite time in the future"); Belk v. Charlotte- Mecklenburg Bd. of Ed., 269 F.3d 305, 347 (4th Cir.2001) ("Before a court grants a permanent injunction, the court must first find necessity--a danger of future violations."); Bloodgood v. Garraghty, 783 F.2d 470, 475 (4th Cir.1986) ("An injunction is a drastic remedy and will not issue unless there is an imminent threat of illegal action."). Parkman offers no evidence in this regard. The fact that he may seek reemployment with the University or employment elsewhere in the future is simply too speculative to meet the understandably stiff burden for obtaining permanent injunctive relief.

X.

As set forth above, we affirm the district court's grant of summary judgment in favor of the Defendants with respect to all claims pressed by Parkman on appeal.

AFFIRMED.

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH CAROLINA COLUMBIA DIVISION

Thomas M. Parkman,)C.A. No. 3:99-579-17
)
vs.)
) ORDER
The University of South Carolina;)
Dr. George D. Terry; Bobby D. Gist;)
Jennifer R. Ottervik; and Jeffrey R.)
Whitson,)
)
Defendants.)

This case is before the court on the defendants' Motion for Summary Judgment. The plaintiff, Thomas M. Parkman ("Parkman") responded, and the defendants replied.

STANDARD

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). It is well established that summary judgment should be granted "only when it is clear that there is no dispute concerning either the facts of the controversy or the inferences to be drawn from those facts." Pulliam Inv. Co. v. Cameo Properties, 810 F.2d 1282, 1286 (4th Cir. 1987).

The party moving for summary judgment has the burden of showing the absence of a genuine issue of material fact, and the court must view the evidence before it and the inferences to be drawn therefrom in the light most favorable to the nonmoving party. United States v. Diebold, inc., 369 U.S. 654, 655 (1962). When the defendant is the moving party and the plaintiff has the ultimate burden of proof on an issue, the defendant must identify the parts of the record that demonstrate the plaintiff lacks sufficient evidence. The nonmoving party, here the plaintiff, must then go beyond the pleadings and designate "specific facts showing that there is a genuine issue for trial." Fed. R. Civ. P. 56(e); see also Celotex Corp. v. Catreti, 477 U.S. 317 (1986).

A party "cannot create a genuine issue of material fact through mere speculation or the building of one inference upon another." Beale v. Hardy, 769 F.2d 213, 214 (4th Cir. 1985). Therefore, "[m]ere unsupported speculation... is not enough to defeat a summary judgment motion." Ennis v. National Ass 'n of Bus. & Educ. Radio, Inc., 53 F.3d 55, 62 (4th Cir. 1995).

FACTUAL RECORD

Viewed in the light most favorable to the plaintiff, the facts in this case are as follows:

Parkman became a tenured librarian at the University of South Carolina ("University") in 1988. In 1992, a student assistant in the Music Library accused Parkman of sexual harassment. The student refused to file a formal complaint. The University initially issued a letter of reprimand based on the accusation, even though no formal investigation of the charges was conducted. Subsequently, however, the University rescinded the reprimand and instead issued a letter of warning which made no determination of guilt. The University agreed to purge all references to the complaint from Parkman's personnel file. Some record of the allegation was, however, apparently retained by the University's office of Equal Opportunity Programs ("EOP"). In January 1995, the University hired Jennifer R. Ottervik ("Ottervik"), one of the defendants, to serve as Parkman's assistant in the Music Library. Parkman and Ottervik disliked each other from the start. They disagreed about how the library should be operated and openly criticized each other.

Parkman claim that Ottervik instructed some of the student assistants how to access pornography on the library computers. Parkman also claims that he directed the students to stop using the computers to access pornography as soon as he learned of the improper use.

Parkman and Ottervik had words about their situation and disagreed how to handle it. On October 27, 1995, Parkman wrote a memorandum on the issue to his supervisor

Allen Stokes. Apparently on the same date, Ottervik filed a sexual harassment and discrimination complaint against Parkman with the EOP. That complaint was dated October 27, 1995, but was not mailed to Parkman until October 31, 1995. Thus, Parkman was likely unaware of Ottervik's complaint when he drafted his memorandum to Stokes.

In her very broad but vague EOP complaint, Ottervik alleged a hostile environment based, at least in part, on an allegation that Parkman refused to take any action to stop the use of the library computers for illicit purposes. She further claimed that Parkman had made "numerous sexual advances toward male students and student assistants" in the library. These allegations were at least superficially similar to the 1992 complaint against Parkman.[7] No names, dates or other specifics as to either the allegations of harassment of Ottervik or the allegations of the male students were provided. Ottervik claimed generally that she had been forced to "endure Mr. Parkman's sexually offensive remarks, conduct and comments," and stated that several of the male students had come to Ottervik stating "that they have been 'touched' by Mr. Parkman." She alleged that Parkman had, on at least one occasion referred to her as "stupid" and a "bitch." Finally, and again without any specificity, Ottervik alleged that she had been "forced to endure terms and conditions of employment that male employees are not forced to endure."

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[7] From almost the time she started working at the Music Library, Ottervik kept a personal diary outlining her dissatisfactions with Parkman. She never mentioned any complaints by males of inappropriate sexual behavior by Parkman in this diary. There is also no indication that she ever filed a complaint on behalf of any of the male students she alleged had reported inappropriate touching prior to filing this complaint. Ottervik admitted in her deposition that a few months prior to filing this complaint, she talked with someone at the University about the 1992 complaint against Parkman.

Defendant Bobby D. Gist ("Gist"), the University's EOP officer, notified Parkman of Ottervik' s complaint in a letter written a few days later. That letter ordered Parkman to refrain from discussing the complaint with any member of the faculty, staff or student body. It does not appear that the University placed any limitation on Ottervik as to contacting witnesses. There is certainly evidence in the record that she did contact individuals and had them contact Gist with their complaints about Parkman. Thus, Gist was at least aware that Ottervik was making contacts and supporting her claims in a manner in which Gist had prohibited Parkman from advancing his defense.

Ottervik's EOP complaint listed six witnesses against Parkman. Five of these persons were also listed as individuals "who may have experienced similar conduct from the accused." Gist had these names removed from the copy of the complaint served on Parkman. Despite the very broad and often vague nature of Ottervik's complaint, there is no indication that Gist or anyone else ever sought clarification from Ottervik despite provisions in the relevant policies allowing the EOP to seek clarification. There is, likewise, no suggestion that any effort was made to insure that the alleged improper action occurred within the 180-day time frame which the relevant procedures expressly required to be alleged specifically.

Thus, on receipt of this complaint, Parkman knew he stood accused of a broad range of violations of University policy and law. Parkman did not, however, know who (other than Ottervik) he was accused of harassing, how or when he was alleged to have treated Ottervik differently in the terms and conditions of her employment, in what manner he was alleged to have "harassed" Ottervik, or who would testify against him. Even if he did suspect who might testify, he was not allowed to contact them. Parkman was also, effectively, precluded from contacting persons who might testify in his defense.

The day after Ottervik's complaint was served, Parkman met with Gist and defendant Dr. George D. Terry ("Terry"), the University's Provost for Libraries. Parkman informed Gist that he would be retaining an attorney, a right provided for under the University's Sexual Harassment Policy, to represent him in defending against Ottervik's complaint. Gist advised Parkman that if the allegations were founded, the University would seek to revoke Parkman's tenure.

One week later, on November 8, 1995, Gist wrote Parkman requesting a formal response to the complaint. He also asked for a list of any witnesses who might speak on Parkman's behalf, even though the University still had not informed Parkman of the witnesses listed by Ottervik or who might otherwise be interviewed by the EOP.

On that same date, defendant Jeffrey R. Whitson ("Whitson"), a graduate student, filed a sexual harassment complaint against Parkman. He alleged various episodes of verbal and physical sexual harassment including that Parkman hugged him and made sexually suggestive comments to him. Whitson's complaint repeated Ottervik' s allegations that Parkman had referred to Ottervik as a "bitch." While Whitson' s complaint was relatively specific as to actions directed toward him, he also provided general allegations that Parkman had inappropriately touched other male students. No names, dates or specifics were provided as to the other individuals. Whitson's own allegations included references which might indicate specific dates (such as referring to events soon after he was hired), but gave no specific dates.

The next day, before Parkman had received the Whitson complaint, Parkman's attorney formally responded to the Ottervik complaint. He denied the charges and alleged that Ottervik had engaged in a personal vendetta against Parkman designed to have Parkman removed from his position so she could assume the job. Parkman's attorney specifically requested the list of witnesses against Parkman as well as other relevant materials.

Gist provided a copy of the Whitson complaint to Parkman by letter dated November 9, 1995. As he did when forwarding the Ottervik complaint, Gist advised Parkman not to discuss the complaint with any member of the faculty, staff or student body. The next day, based on the pendency of Whitson and Ottervik's complaints, Terry reassigned Parkman to a non-supervisory position outside the Music Library. He also ordered Parkman not to communicate with any member of the library staff for any reason until the investigation was completed.

On November 10, 1995, Parkman's attorney responded in writing to Whitson's complaint. He denied the allegations on Parkman' s behalf and asserted that Whitson was cooperating with Ottervik in fabricating charges against Parkman. Just as he had in regard to Ottervik's complaint, Parkman's attorney requested a list of, and statements from, witnesses substantiating Whitson's claims. Parkman's attorney seems to have presumed that some form of hearing would be held which is required for tenure revocation proceedings, but not under the basic EOP procedures before issuing a Report (of Findings) and Recommendation.

Some time after Parkman was transferred, Ottervik assumed Parkman's position as the head music librarian. Within a few months, she replaced the technical assistant who worked for Parkman with Whitson.

On November 15, 1995, Gist wrote Parkman's attorney enclosing copies of both the University's Sexual Harassment Policy ("University Policy") and the EOP Complaint Procedures ("BOP Procedures"). The University Policy described the steps used by the EOP for investigating complaints. The EOP investigation could conclude either with settlement or a Report and Recommendation. In the latter situation, the Report was to include very specific matters including: "[a] summary of the statements and evidence obtained"; "[a] summary of prior settlements or substantiated complaints against the charged party"; and "[am appendix containing.., written statements and other tangible evidence obtained during the investigation." University Policy at II.G.5.b. The University Policy expressly required that "the Report and Recommendation shall then be provided to the. . . charged party." University Policy at ll.G.5.c. There is no suggestion that any materials or attachments may be deleted. Other provisions regarding the pre Report and Recommendation policy suggest that the charged party should have full access to the evidence against him or her. E.g., University Policy at ll.G.4.g. ("all information received during the investigation [is] confidential and shall [be made] available only to the parties and to appropriate University officials"). There is, however, no indicated that a hearing or opportunity for cross examination is required, but is far less detailed as to what must be included in the Report and Recommendation which the EOP Procedures refer to as "findings and recommendations."

The EOP Procedures, by contrast, included greater detail as to certain steps in the investigation process. While the EOP Procedures did not expressly address disclosure of witness names, nothing in it suggests that such names may be withheld. See EOP Procedure § III.B. (Complainant shall be asked to identify witnesses and shall be advised that the complaint will be provided to the person charged). The EOP Procedures require the findings to include "a chronology of the investigation (who was interviewed and by whom)" among other specific matters. EOP Procedure § III.E. Gist's letter did not address Parkman's attorney's repeated requests for witness statements.

Parkman's attorney met with Gist during the EOP's investigation on or about December 11, 1995, and again requested a witness list from Gist. Parkman's attorney again offered to provide a witness in exchange for the University's witness list so that he could determine the contentions of the University's witnesses.

The University did not provide Parkman a witness list in response to this or any other request. Instead, a few days after the December 11, 1995 meeting, Gist wrote Parkman's attorney stating that, based on his review of the evidence obtained in the investigation, including information obtained from relevant (but undisclosed) witnesses, he recommended that Parkman informally agree to a permanent reassignment without supervisory responsibilities. Nonetheless, despite indicating he had already reached a conclusion without interviewing any witnesses Parkman might identify, Gist advised Parkman that he could still provide information supportive of his position. Gist still did not identify the University's witnesses or state that the witnesses' names would not be disclosed.[8]

Parkman refused to accept Gist's informal proposal but did not submit any additional evidence in his favor. His attorney's letter in response maintained Parkman's innocence and promised to contest the charges in whatever forum the University selected to hear this matter.[9] It does not appear that any hearing or further contact occurred before the EOP concluded its investigation. Parkman himself was never interviewed after he obtained counsel.

More than a month after the last correspondence between the BOP and Parkman's attorney, on January 26, 1996, the BOP issued two "Letters of Determination," finding that Parkman had violated the University's Sexual Harassment Policy in regard to both Whitson and Ottervik. These Letters of Determination do not appear to be what is described in the University Policy as a "Report and Recommendation," although it would appear from the stage of the proceeding that this is the most that they could be. See University Policy at 13-14. Certainly they fail to provide the detailed documentation described by the University Policy. These documents are, moreover, presented as "Determinations" not "Reports and Recommendations." Neither do the Letters of Determination contain the detail described in the EOP Procedure for Reports of Findings and Recommendations. Presumably, however, these Letters were intended to satisfy the requirements of the University Policy and EOP Procedure which Gist himself had forwarded to Parkman at the outset of the proceedings and had indicated would control the proceedings.

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[8] It is unclear whether Gist indicated a basis for refusing to disclose the witnesses during the December 11, 1995 meeting.

[9] As noted above, Parkman's attorney seemed to assume there would be some form of a hearing despite no suggestion of one at this stage in the process in the EOP Procedures and University Policy which were sent to Parkman.

In reaching its conclusions as stated in the Letters of Determination, the EOP relied on testimony of a "multitude" of unidentified witnesses. The Letters do not, however, summarize or attach any statements or provide the required chronology of who was interviewed by whom and when. Even the number of witnesses interviewed was not disclosed although it appears to be far more than disclosed by either Ottervik or Whitson.[10]

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[10] Ottervik listed six witnesses. Five of these individuals were also listed as persons who may have had similar complaints (including Whitson). Whitson's complaint listed no witnesses expressly, although it contained the names of three persons other than Whitson and Parkman. Only one of these was not listed by Ottervik. Thus, had the EOP interviewed all persons disclosed by either complainant, only seven people other than Parkman would have been interviewed. Later disclosures, however, indicated the EOP interviewed twenty-four "witnesses."

The Letters of Determination also referred to interviews of a sampling of students. This would appear to be contrary to the stated policy on confidentiality. See EOP Procedure at VII.13.3; University Policy at II.G.4.g. In addition, the EOP stated that Whitson's accusations were "strikingly similar" to the 1992 complaint against Parkman, even though these allegations were never substantiated and all references to the 1992 allegations were supposed to have been removed, at least from Parkman' s personnel file. Despite the fact that the University Policy only allowed consideration of previously substantiated claims, Gist seems to have relied heavily on these allegations.[11]

The Letters' findings as to Whitson's complaint refer to and include findings as to Ottervik's complaint. Both also characterize Ottervik's complaint as alleging that Parkman subjected her to "unwelcome and sexually offensive comments on a continual basis." This allegation manages to go further than even the broad allegations of Ottervik's complaint.[12]

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[11] On this point, Gist found Whitson's and Ottervik's allegations to be particularly credible because of his assumption they would have been unaware of the 1992 allegations. Ottervik has, however, conceded her deposition in this action that she was aware of the earlier allegations when she made her complaint. It is not clear if Gist merely assumed incorrectly, or inquired and received a different response from Ottervik than she gave under oath in this action.

A couple of weeks after the EOP "Letters of Determination" were issued, Terry issued a written reprimand to Parkman. This reprimand made permanent his reassignment outside the Music Library and without supervisory responsibilities. Terry warned Parkman that any additional acts of sexual harassment could result in tenure revocation proceedings. In violation of the University's Sexual Harassment Policy, Terry did not inform Parkman of his right and how to appeal. Terry Letter dated February 14, 1996.

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[12] Ottervik's complaint fails to state her allegations with the specificity required by either the University Policy on Sexual Harassment (at ll.G.3 .e.(3)) or the EOP Complaint Processing Procedures (at III.A.2.). It does not, however, appear that any effort was made to "clarify issues which may be unclear." EOP Procedure at III.B. If such efforts were made, no such clarification was provided to Parkman. This specificity concern is not simply theoretical. Ottervik included utterly unspecified allegations of sexual harassment which, given those matters as to which she gave specificity could fairly be presumed to be limited to one or two references to Ottervik as a "bitch" or "stupid" and unspecified differences in the terms and conditions of her employment. It came as a surprise to the court, therefore, that the ultimate findings of the EOP referred to Ottervik's complaint as including allegations that she (not just male students) was “subjected... to unwelcome and sexually offensive comments on a continual basis.”

Parkman apparently sought some form of review first from Terry then from the Interim Vice President for Academic Affairs and Provost, Winona Vernberg ("Vernberg"). The letters requesting review referred to the Faculty Grievance Procedures and Faculty Manual, not the University Policy or EOP Procedures. Both rejected Parkman's challenge to the findings and resulting discipline based on what appears to be limited to their personal view of the EOP's findings and recommendations. It appears neither met with plaintiff or his counsel, reviewed underlying evidence such as witness statements supporting the EOP findings (if, in fact, any existed) or otherwise provided more than the most cursory review.

After receiving Vernberg's rejection of further review in late March 1996, plaintiff's attorney wrote to the University's President, Dr. John Palms on April 1, 1996, describing the history of the investigation what he viewed as deficiencies in the appeal process. As with Terry and Vernberg, counsel sought review under the Faculty Grievance procedures. On May 16, 1996, plaintiffs attorney wrote to the University's legal counsel expressing concern that Dr. Palms had not responded. The University's attorney promptly responded with a promise to follow up on the matter.

On May 28, 1996, Dr. Palms responded to the April 1, 1996 letter, rejecting any relief. He, like Terry and Vernberg, appears only to have considered the EOP's findings and recommendations. There is no suggestion he provided the protections promised by the EOP Procedures for Presidential Review, which as noted above, were not expressly referred to in the letter requesting review.[13]

Parkman then appealed to the Faculty Grievance Committee.[14] He was given a hearing in which he and two witnesses testified on his behalf Parkman also submitted written statements from twenty-seven witnesses which had not previously been submitted. During this hearing, Terry testified against Parkman, presumably only as to the procedure afforded and not as to the underlying allegations.

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[13] The EOP procedures for Presidential Review/Appeal called for empanelling an "Impartial Review Panel," allowed both parties to be present, allowed some procedures for questioning of witnesses (to be done by the Panel), and allowed each side to submit additional evidence. EOP Procedure § IV. This procedure allows the Panel to request additional documentation, including the EOP findings and recommendations. This last point seems to presume that this would not be the primary source of information, but only a supplementary source.

[14] The University Policy, unlike the EOP Procedure, refers only to the possible availability of grievance procedures. Nonetheless, the University Policy suggests some additional steps and opportunity to be heard before the EOP's "recommendation" becomes a "decision." The detailed procedures for "Presidential Review/Appeal" are found in the EOP Procedure § LV. The EOP Procedure also discusses the availability of a grievance procedure under certain circumstances which do not appear to be present here. EOP Procedure § V.C.

The Faculty Grievance Committee decided that the EOP had violated Parkman's due process fights, most particularly by failing to provide the names and statements of the EOP's witnesses. The Committee was also concerned that the EOP considered the 1992 allegations, since those charges had not been substantiated and should have been removed from Parkman's file. The Faculty Grievance Committee referred the case to the University's general counsel for further mediation and, if not successful, remanding the case to the EOP for further proceedings consistent with Parkman's due process fights. The Committee, however, refused to consider Terry's reassignment of Parkman.[15] The Faculty Grievance Committee's decision was provided in a letter dated November 19, 1996.

Mediation followed, but was unproductive. The University refused to substantially alter the punishment imposed against Parkman. It did, however, apparently offer to recommit the matter to the EOP for review.

Rather than accepting remand to the EOP, Parkman appealed to the Board of Trustees Academic Affairs Committee ("AAC") in a letter dated February 18, 1997. He insisted the previous review by the EOP was conducted improperly and further review by the EOP would be futile. Thus, Parkman did not seek the remedy which was suggested by the Faculty Grievance Committee.

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[15] The Committee refused to consider the reassignment "since it was based on an independent reason within the appropriate scope of Dr. Terry's supervisory authority." However, it is clear from Dr. Terry's reassignment letter to Parkman that the action was based solely on the results of the EOP's investigation.

The AAC stated concern with the delay in resolving the matter and acknowledged the Faculty Grievance Committee's findings of a due process violation. On June 12, 1997, without reaching any conclusion of his own, the Chairman of the AAC directed the University's general counsel to engage in additional and prompt mediation efforts and, if unsuccessful, remanding the matter to the EOP for an investigation in compliance with the University's policies and Parkman' s due process rights. Thus, the AAC proposed or ordered the same relief as the Faculty Grievance Committee.

This time the University's general counsel offered to remove the written reprimand and all documentation regarding the sexual harassment complaints from Parkman's file, but only if Parkman would agree to dismiss his grievance proceeding and give the University a release of all claims. Parkman refused the offer because the University failed to absolve him of guilt and restore him to his previous position. Thus, mediation failed a second time.

Sometime before November 24, 1997, Gist sought further clarification from the Faculty Grievance Committee on how the EOP should proceed with its reconsideration. The Committee met with the various persons involved, then specifically directed the EOP to provide Parkman with the specific details regarding the acts complained of and the names of witnesses to the alleged harassment. Gist Letter dated March 25, 1998.

On April 16, 1998, more than two years after the complaints were filed against Parkman, the EOP sent Parkman a list of the names of twenty-four witnesses who had been interviewed. Of these twenty-four witnesses, only four of these were named in either Whitson's or Ottervik's EOP complaints.[16]

The EOP did not, however, provide any other information such as addresses, written statements or summaries of the witnesses' statements, even though the directive issued by the Faculty Grievance Committee (which the EOP sought) required the EOP to provide the specific details regarding the acts alleged against Parkman. On May 11, 1998, Parkman's attorney provided the names of thirty-three witnesses to the EOP. He also requested that the EOP provide statements and reports of interviews of the University's witnesses. Parkman's attorney volunteered to provide statements of his client's witnesses upon request. As noted previously, neither the EOP findings and recommendations nor any other document attached to it disclosed the specifics of the allegations, the identity of witnesses making them or summarized the witnesses.

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[16] It is not clear how the other witnesses came to be added, but their addition raises concerns that the EOP may have itself sought out additional witnesses against Parkman. This concern is heightened by the exclusion of at least one person who was interviewed by the EOP but who had testified favorably to Parkman. Specifically, the list did not include John Farley, a former Music Library assistant who quit his job in protest over Parkman's reassignment. In his EOP interview, Farley refuted Ottervik's claims against Parkman. Farley also stated that he heard Ottervik say that she was going to bring sexual harassment claims against Parkman because the administration had not removed him as her supervisor.

The EOP could locate only eight of Parkman's thirty-three witnesses in the University's directory. Counsel for the University, therefore, wrote Parkman's attorney on May 17, 1998, and expressed hesitancy over contacting the witnesses. Counsel for the University stated concern that these witnesses might not possess relevant information about the two complaints against Parkman, since most of the witnesses were no longer associated with the University. The University, therefore, requested that Parkman provide the University with some idea of what information each witness could provide and the addresses and telephone numbers of those witnesses.

Parkman did not provide the EOP with the requested information, at least not in the requested form. He did, however, send Gist a very lengthy letter which purported to be a complaint about Ottervik's abuse of the system. Parkman Letter dated May 26, 1998. In this letter, Parkman refers to his list of thirty-three witnesses and five affidavits previously submitted in support of an earlier similar complaint by Parkman against Ottervik for abuse of the EOP process. In addition to providing a detailed explanation of why he believed Ottervik's accusations were false and filed for an improper purpose, Parkman provided a single paragraph on the sixth page indicating that all thirty-three of his listed witnesses were either former employees or users of the library who would be aware of Parkman's workplace behavior, particularly during the time Whitson worked there. In short, while stated as a separate complaint, this letter stated Parkman's defense to the reopened investigation of Ottervik and Whitson's allegations against Parkman and provided a general description of what Parkman's witnesses would know. While not precise as to their knowledge, the information was responsive to the EOP's general concern as to the relevant knowledge.[17]

Gist responded to Parkman's letter on June 11, 1998, acknowledging receipt of the witness list and referenced letter. Although he made clear that Parkman's "complaint" was not within his jurisdiction, Gist appeared to accept it as a defense to the complaints against Parkman. Despite the paragraph indicating these individuals had relevant knowledge, and despite plaintiffs counsel's May 11, 1998, letter which expressly asked that these witnesses be interviewed, Gist insisted on more information and a release from Parkman before contacting any of them.

The record contains a large number of witness statements. It is not clear, however, when or if these were provided to Gist, although they are dated between 1996 and 1998. They may have been among documents provided to the Faculty Grievance Committee over an undisclosed period of time. The record also does not reveal further action by the EOP. It does, however, contain several letters from Parkman to various University officials or Faculty Grievance Committee members complaining about the delay and inadequate proceedings.

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[17] Given that Parkman remained in the position of presenting a defense that would "prove a negative" as to very broad allegations of generalized misconduct toward both males and females, and given the EOP's failure to provide information as to what Ottervik's and Whitson's (arguably the EOP's) witnesses had said, the EOP would be hard put to justify greater specificity from Parkman as to what his witnesses might say. Certainly, it does not seem to have plead any such requirements on the complainants.

In October 1998, Parkman notified the University's Board of Trustees of the EOP 's continued failure to comply with the Committee's and the Board's directives to provide him with the specific details of the allegations against him. The Board did not respond. Parkman then filed this lawsuit on January 28, 1999.[18]

CLAIMS

Counts	Claim	Defendant(s)
1.	Breach of Contract	University
2.	Common Law Conspiracy	All Defendants
3.	Invasion of Privacy	All Defendants
4.	§ 1983 - Due Process and Equal Protection	All Defendants
5.	§ 1985 Conspiracy to Deprive Property Interests	All Defendants
6.	Intentional Infliction of Emotional Distress	All Defendants
7.	Injunctive Relief Seeking Due Process	University

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[18] The University, which has been held to be the alter ego of the state of South Carolina by several judges in this district, has expressly waived eleventh amendment immunity in this case.

DISCUSSION

A. Statute of Limitations

It is undisputed that the three-year statute of limitations provided for under South Carolina law (S.C. Code § 15-3-530) governs Parkman's claims under his second through sixth causes of action: common law conspiracy, invasion of privacy, Section 1983 violations, Section 1985 violations, and intentional infliction of emotional distress. Therefore, any claims accruing before January 28, 1996, are time barred.

Contrary to Parkman's assertion, only defendants Ottervik and Whitson seek dismissal of the claims against them based on the statute of limitations. The other defendants, the University, Gist, and Terry impliedly concede that their alleged wrongful conduct occurred, at least in part, after January 28, 1996.

As for Ottervik and Whitson, Parkman primarily claims that they filed false and malicious sexual harassment claims against him which were designed to injure his reputation and to cause him mental suffering and humiliation. It is undisputed that the sexual harassment claims were filed and Parkman was given a copy of the claims by November 1995. Parkman was immediately removed from his position and reassigned to what he described as a "demeaning" job in a "dump" of a building. (Parkman Dep. p. 180). While he heard rumors or had suspicions as to possible later actions by Ottervik and Whitson, Parkman offered no evidence of any action by either after this date which might support any of his causes of action.[19]

Parkman argues that all of his causes of action were commenced timely as to all defendants, He asserts that the University did not inform him of its decision to discipline him until January 30, 1996, the date Parkman's lawyer received the EOP determination recommending that Parkman be reprimanded. Thus, he argues this is the first date on which his claims accrue.

Parkman's argument is unavailing as to claims against Ottervik and Whitson. Parkman conceded in his deposition that Ottervik and Whitson had not done anything to harm him after January 26, 1996. They had made their charges against him, which Parkman considered slanderous at the time he received them, and he suffered the resulting humiliation of being temporarily reassigned by November 1995. As such, he knew he had a cause of action against Ottervik and Whitson in 1995, more than three years before he commenced this action. The motion for summary judgment must, therefore, be granted and these two defendants dismissed from this action on statute of limitations grounds.

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[19] Parkman alleges that Ottervik opened his personal mail at work and committed other similar actions which he characterizes as invasions of his privacy. Even if these events occurred within the three-year limitations period, such acts would not be so outrageous as to be actionable as either invasion of privacy or intentional infliction of emotional distress. No other cause of action would apply.

Even construing the arguments by the remaining defendants as seeking summary judgment on statute of limitations grounds, these defendants have failed to establish that Parkman knew or through the exercise of reasonable diligence should have known that he had a cause of action against them prior to the three-year limitations period. The evidence shows that Parkman was not aware of the EOP's recommendation until January 30, 1996, which would be the earliest date the limitations period commenced. Further, due to ongoing efforts to obtain relief within the University's appellate process, it is not clear that this claim was actionable (if at all) until sometime later. As such, Parkman's allegations of wrongful conduct against the University, Terry, and Gist are not time barred.[20]

Having determined that the claims against Ottervik and Whitson should be dismissed, the court now turns to the claims against the remaining defendants.

B. Merits Discussion

Breach of Contract
(First Cause of Action — University is Sole Defendant)

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[20] Parkman alleges that Gist threatened him in their November 1, 1996, meeting. Any claim seeking recovery for this conduct would be time barred. Moreover, based on the evidence adduced by Parkman, the conduct alleged was not sufficiently outrageous so as to constitute intentional infliction of emotional distress. Whether the evidence of Gist's alleged conduct in the November 1meeting would be relevant to help prove Parkman's other claims is not an issue before the court at this time.

In his first cause of action, Parkman asserts a breach of contract claim solely against the University. This contract claim is based primarily on the terms of his tenure. Parkman was a tenured "librarian." After the reassignment he was still a tenured librarian, albeit in a different library. His rank and salary remained the same.

Parkman contends that under tenured faculty rules, he was entitled to a hearing, but he has pointed to no document that requires such a hearing prior to reassignment. Parkman has also conceded "the right of the Dean to reassign employees to other positions within the University." On this record, the court concludes that no genuine issue of material fact exists as to the breach of contract claim to the extent it is based on tenure.

To the extent the contract claim rests on allegations that the University failed to comply with the EOP Procedure and University Policy, this court is presented with a more difficult question. While the court is greatly troubled by the extensive evidence which suggests that the EOP disregarded the requirements of both documents, and implemented a one-sided process that ignored basic concepts of fairness and impartiality, the court ultimately concludes that any contract claims based on these deficiencies cannot survive summary judgment.

First, the court will presume that both documents create contracts and that, to the extent they differ, plaintiff can rely on either. The documents became binding on the University no later than when Gist forwarded them to Parkman, advised him that they would be followed, and required his compliance with the provisions of these documents and the EOP directive that he not contact any witnesses.

Presuming these to be contracts, a jury could certainly conclude that various actions and inactions by the EOP were material breaches of the terms of the contracts because they resulted in fundamental unfairness in the EOP investigation. Specifically, a jury could reasonably conclude that: (1) plaintiff never had adequate notice of the precise charges against which he was required to defend; (2) no effort was made to limit the charges considered to the strict 180 day pre-complaint time frame imposed by the relevant procedures (and corresponding law); (3) plaintiff was hampered in his defense both by being denied notice of the complainants' witnesses and being precluded from speaking with any student or employee who might be able to testify in his favor; (4) no similar limitation was imposed on the complainants[21]; (5) the EOP assumed an impermissible adversarial role rather than seeking, impartially, to investigate the matter; (6) the EOP considered impermissible information (most particularly the 1992 allegations) and failed to consider proper information, or at least to document properly what information was considered (no chronology of the investigation or summary of witness statements was prepared or included); and (7) the EOP compounded the failings in their process by failing to properly document their investigation and share that information with plaintiff for his use in the appeal process;

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[21] Letters between Ottervik or Gist and third parties confirm that Ottervik freely contacted others and sought their support for her allegations against Parkman. For example, one individual contacted by Ottervik wrote to Gist that she understood all complaints against Parkman were to be directed to him. She then proceeded to list her various dissatisfactions with Parkman, which were hardly limited to supporting Ottervik's allegations. Among them, for instance, was an assertion that Parkman "sleeps at his desk."

The difficulty for plaintiff's claims, however, arises in the "appellate" stage of the University's process. The University Policy provided for review of decisions through any available grievance process. The EOP Procedure allowed for a "Presidential Review," in addition to preserving other rights under available grievance procedures.

Although plaintiff did request reviews from Terry, Vernberg, and, ultimately, President Palms, he never requested review under the "Presidential Review" procedures. Rather, his counsel's letters each expressly refer to steps being taken under the Faculty Grievance Procedure or in accord with the Faculty Manual. Neither was plaintiffs request served in a proper and timely manner to obtain the Presidential Review as described under the EOP Procedure. Such a review must be requested from the University's President in writing and within five days of receiving the EOP determination. As plaintiff first requested review from Terry and Vernberg, his subsequent request to Palms fell long after the time allowed.

In short, plaintiff seems to have elected to proceed under the Faculty Grievance Procedures, rather than under the EOP's Presidential Review Procedures. He therefore elected his remedy. Even if the remedies were not initially exclusive, with one being warned by the election of the other, Parkman cannot be heard to complain that he did not receive a review he did not request.

While there was a good deal of delay, plaintiff did receive the review prescribed by the Faculty Manual, including review by the Faculty Grievance Committee. He does not complain about the process they employed. While they may not have given Parkman all the relief he desired, it is questionable whether they could have given him any greater relief Indeed, the University has raised significant questions whether the Faculty Grievance Committee had authority to order mediation and remand particularly given that Parkman's tenure and pay were not affected. This court need not, however, resolve that issue as the matter was mediated as they ordered, was remanded, and the matter reopened.

Dissatisfied with the remand option after the mediation failed, Parkman sought and received further review from the Board of Trustees' Academic Affairs Committee. Again, while there may be questions whether plaintiff properly invoked this protection at that stage, it is undisputed that this Committee ordered the same relief as the Faculty Grievance Committee: mediation and remand.

Subsequent guidance was sought by and provided to the EOP by the Faculty Grievance Committee as to how to handle the remand. The process was begun, but ultimately broke down under circumstances that demonstrate deficiencies on both sides. Whatever the circumstances, however, this action was filed when there was still an open (remanded) investigation. That investigation was never completed and plaintiff has retired with no intent to seek re-employment. There is no evidence to suggest that any other person or potential employer would be provided with any information which may be contained in this incomplete investigatory file.

To the extent the documents at issue formed contracts, therefore, this court concludes that the contractual remedy for improper proceedings in the initial investigatory process was limited to the review provided within the contracts themselves. Plaintiff invoked only the grievance aspects of that review, and cannot, therefore, complain of any failure to afford him the arguably broader protections of Presidential Review. As plaintiff received a remand, and that remand remained open at the time this action was filed, there is no finding against plaintiff by the EOP (the original finding having been mooted by the remand itself). Thus, while the process had its significant failings, the court finds that there are no legally compensable contractual damages.[22]

Common Law Conspiracy and Conspiracy Under 42 U.S.C. § 1985 (Second and Fifth Causes of Action —All Defendants)

In his second and fifth causes of action, Parkman asserts claims of civil conspiracy under both South Carolina common law and 42 U.S.C. § 1985. The underlying principle of all conspiracy claims is that there must be a combination of two or more parties joined for the purpose of injuring the plaintiff. Future Group, II v. NationsBank, 324 S.C. 89; 478 S.E.2d 45 (1996); Simmons v. Poe, 47 F.3d 1370, 1376 (4th Cir. 1995). Not surprisingly then, a corporation is legally incapable of conspiring with itself Lee v. Chesterfield General Hospital, Inc., 289 S.C. 6; 344 S.E.2d 379, 383 (Ct.App. 1986), citing Anderson v. Southern Ry. Co., 224 S.C. 65, 77 S.E.2d 350 (1953); Goble v. American Railway Express Co., 124 S.C. 19, 115 S.E. 900 (1923); Buckner v. Lower Florida Keys Hospital District, 403 So.2d 1025 (Fla. App. 1981). Multiple individuals acting in their official capacities on behalf of a single corporation are also incapable of constituting a conspiracy. Bellamy v. Mason's Stores, Inc., 508 F.2d 504,508 (4th Cir. 1974); Becker v. Russek, 518 F.Supp. 1040, 1045 (W.D.Va. 1981), aff'd 679 F.2d 876(4th Cir. 1982); Fowler v. Department of Education, 472 F.Supp. 121,122 (E.D.Va. 1978),citing Dombrowski v. Dowling, 459 F.2d 190,193 (7th Cir. 1972). See also, State v. National Linen Service Corp., 225 S.C. 232,81 S.E.2d 342,344(1954) (corporation incapable of criminal conspiracy with its own employees who are acting in the course and scope of their employment). This rule is known as the intracorporate conspiracy doctrine. Copperweld Corp. v. Independence Tube Corp., 467 U.S. 752 (1984).

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[22] The court does not address but notes certain additional difficulties with plaintiffs claim in that he failed to avail himself of certain opportunities to file materials in support of his defense, apparently due to a misunderstanding of the EOP investigation stage of the proceeding. While the EOP had many failings of its own which may have contributed to plaintiff's defaults, the issue of plaintiffs own failings raises speculativeness concerns as to the ultimate cause of any damages he may have sustained.

The origins of the intracorporate conspiracy doctrine are found in Nelson Radio & Supply Co. v. Motorola, Inc., 200 F.2d 911(5th Cir. 1952), an antitrust action based on an alleged conspiracy between the defendant corporation and its officers, employees and agents. In dismissing the action, the court stated:

> It is basic in the law of conspiracy that you must have two persons or entities to have a conspiracy. A corporation cannot conspire with itself any more than

> a private individual can, and it is the general rule that the acts of the agent are the acts of the corporation.

Id. at 914.

The Fourth Circuit recognized the doctrine in Greenville Publishing Co., Inc. v. Daily Reflector, Inc., 496 F.2d 391 (4th Cir. 1974), and it was subsequently validated in Copperweld Corp. v. Independence Tube Corp., 467 U.S. 752 (1984). It has been routinely applied to bar claims by government employees against their employers and fellow employees for actions relating to the employment. See, e.g., Buschi v. Kirven, 775 F.2d 1240 (4th Cir. 1985).

This doctrine bars a conspiracy claim against agents of the same corporation unless the plaintiff can prove that the defendant-employee acted in his or her individual capacity. Lee v. Chesterfield General Hosp., Inc., 344 S.E.2d at 383 (Ct. App. 1986). The Fourth Circuit has adopted a standard requiring the plaintiff to show an "independent personal stake" in the objective of the conspiracy. Greenville Publishing Co., Inc. v. Daily Reflector, Inc., 496 F.2d at 399 (1974)(doctrine inapplicable where defendant officer had a monetary interest in objective of the conspiracy). In Oksanen v. Page Memorial Hospital, et al., 945 F.2d 696(4th Cir. 1991), the Fourth Circuit noted that this exception had been criticized, and refused to extend it beyond situations where the alleged conspirator had a financial interest in the conspiracy. Id. at 705. The Oksanen court cautioned that further expansion poses the risk of the exception "becoming [one] that threatens to swallow the rule." Id.

In the instant case, Parkman alleges that Terry, Gist, Ottervik, and Whitson conspired to harm him. The claims against Ottervik and Whitson have been dismissed on statute of limitations grounds. Plaintiff alleges no facts which would a support a finding that Terry and Gist had any financial stake in the alleged conspiracy. In fact he acknowledges that Terry and Gist had no personal bias against him.

Accordingly, the court will grant summary judgement on the common law and Section 1985 conspiracy claims.

Invasion of Privacy
(Third Cause of Action — All Defendants)

In his third cause of action, Parkman alleges the defendants invaded his privacy. There are three types of invasion of privacy in South Carolina: (1) the wrongful appropriation of personality, (2) the publicizing of private affairs with no legitimate public concern, and (3) the wrongful intrusion into private affairs. Rycroft v. Gaddy, 281 S.C. 119, 314 S.E.2d 39 (1984). As to defendants Gist, Terry and the University, it appears plaintiff is pursuing recovery under the second prong.[23]

Parkman testified at his deposition that Bobby Gist invaded his privacy by "accept[ing] without any questions or skepticism a series of fraudulent accusations about me, about my life, about my lifestyle, about the way I behave."

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[23] As noted above, the allegations against Ottervik and Whitson have been dismissed on statute of limitations grounds and do not, in any case, support an invasion of privacy claim. Plaintiffs allegations against these defendants are primarily that they made false accusations, not that they publicized truthful private matters.

[Parkman Depo. pp. 186-187]. These allegations do not support an invasion of privacy claim. The only allegation which might go to the issue of publication of private affairs by Gist is the EOP's apparent decision, as evidenced by the EOP report, to contact witnesses not listed by the parties. No record has, however, been offered to support a claim that plaintiff's injuries flow from this contact. Thus, Bobby Gist is entitled to summary judgment on this claim.

Parkman testified that, to his knowledge, George Terry did nothing personally to invade Parkman' s privacy. [Parkman Depo. p. 184]. No other evidence has been offered of any action by Terry which might be so construed. Thus, George Terry is entitled to summary judgment on this claim.

The University is also entitled to summary judgment on the claim of invasion of privacy. Parkman vaguely alleges only that the University "aided and abetted this whole process." [Parkman Depo. p. 181]. The actions of the University after the EOP issued its initial Letter of Determination have been limited to receiving and responding to Parkman's complaints and appeals. No evidence has been offered of invasion of privacy by the University or its employees acting on behalf of the University within the relevant period. As noted above as to Gist, while the contacting of persons not listed as witnesses, and particularly the "random survey" of students appear to violate the University's own policies on confidentiality and run a grave risk of giving rise to an invasion of privacy claim, no evidence has been offered that plaintiffs injuries flow from these contacts.

For the foregoing reasons, the court concludes that the defendants are entitled to summary judgment on the third cause of action for invasion of privacy.

Section 1983 — Equal Protection (Fourth Cause of Action — All Defendants)

Neither party addresses an equal protection claim in their briefs, and the court is unable to discern any equal protection issues arising from the conduct involved in this case. Plaintiff has failed to demonstrate any genuine issue of material fact that he belongs to a suspect class, or that the class to which he belongs was treated differently from other similarly situated individuals. Accordingly, the equal protection claim must be dismissed.

Section 1983 — Due Process (Fourth Cause of Action — All Defendants)

Parkman claims that the defendants deprived him of his right to due process of law in that he has never been afforded an adversarial hearing, never been allowed to confront his accusers or witnesses against him, and never been allowed to present his own defense in a fair and impartial hearing as required by the Constitution of the United States. There is certainly ample evidence to support a conclusion that the University and its EOP ignored their own procedures, placed Parkman in the impossible potion of defending allegations that were both broad and vague, while prohibiting him from any activity which might clarify or narrow the allegations, effectively precluded him from contacting most persons who could serve as witnesses, ignored his requests for Ottervik and Whitson's witnesses, and considered improper evidence (the 1992 allegations) to bolster the complainants' testimony. Indeed, a jury might reasonably conclude that the EQIP abandoned its duty as impartial fact finder undertaking more of a prosecutorial role by seeking out witnesses against Parkman in addition to those listed by the complainants and ignoring those who spoke favorably of Parkman (Farley), and otherwise establishing a favorable set of procedures for the complainant while both blindfolding and hamstringing the defense.

In seeking summary judgment on this claim, the defendants do not directly contend that Parkman was afforded all the processes he was due. Indeed, in light of the Faculty Grievance Committee's conclusion that Parkman's procedural rights were violated in some respect and the consensus listed above, it would be difficult for this court to conclude that no genuine issue of material fact exists as to whether procedural due process was afforded to Parkman. Accordingly, because fact issues are present regarding the process afforded Parkman, the court must conclude that a jury issue was presented as to whether Parkman was afforded due process. This does not, however, end the inquiry.

Defendants contend that, regardless of the process afforded Parkman, he cannot maintain a Section 1983 claim because he has not suffered the loss of a liberty or property interest. They argue that because Parkman's reassignment did not include tenure revocation or reduction in pay, he was not deprived of any property or liberty interest.

To claim entitlement to protection under the due process clause, either for procedural or substantive due process, a plaintiff must first show that he has been deprived of a constitutionally protected liberty or property interest. Stone v. University of Maryland Medical System Corp., 855 F.2d 167 (4th Cir. 1988). What constitutes a property or liberty interest requires separate analysis for procedural or substantive due process purposes. Because Parkman's complaint does not specify whether his claim is either for deprivation of his procedural or substantive due process rights, the court will analyze both potential claims.

1. Substantive Due Process

To have a property or liberty interest subject to substantive due process protection, a plaintiff must establish that the right in question arises solely from a fundamental interest embodied in the Constitution. Regents of University of Michigan v. Ewing, 106 S.Ct. 507 (1985). At best, Parkman's substantive due process claim would be described as a right to continued employment as the Music Librarian, free from arbitrary state action. See Huang v. Board of Governors of UNC, 902 F.2d 1134, 1142 (4th Cir. 1990). This court declines to recognize this right as a fundamental interest arising solely under the Constitution. See Regents, 106 S.Ct. at 5, 15-16 (Powell, J., concurring). As such, this court finds that Parkman has failed to establish any property or liberty interest protectable under substantive due process principles.[24]

2. Procedural Due Process

A. Property Interest

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[24] Parkman does not argue in his briefs in opposition to the Defendant's Motion for Summary Judgment.

To have a property interest subject to procedural due process protection, a plaintiff must be entitled to a benefit created and defined by a source independent of the Constitution. Board of Regents of State Colleges v. Roth, 92 S.Ct. 2701 (1972). The defendants concede that Parkman's position as a tenured faculty member constitutes a property right entitled to procedural due process protection. See Huang, 902 F.2d at 1141. Even though Parkman possesses this important property right, in order to prevail he must also establish that he has been deprived of this property right by the defendants. See Stone, 855 F.2d at 172.

Parkman concedes that he has not been deprived of his tenure and that he still received the same salary as a tenured librarian despite his reassignment.[25] What he argues is that he was effectively demoted by being placed in a menial position without the supervisory responsibilities he once enjoyed. Huang, like the instant case, involved an interdepartmental transfer of an employee combined with disparaging allegations against the employee. The Huang plaintiff claimed that he had a particular property right in his position as a professor in the biology department and objected to being transferred to the humanities Department. The Fourth Circuit disagreed, finding that the professor had not been deprived of his property right. He retained his tenure and continued to receive a comparable salary. More particularly, the Court ruled:

> We are convinced that any constitutionally protected property interest [an employee has] as a result of his employment contract [is] satisfied by payment of the full compensation due under the contract.

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[25] After this action was flied, Parkman retired from the University.

Huang, 902 F.2d at 1141 (citing Royster v. Board of Trustees, 774 F.2d 618, 622 (4th Cir. 1985)).

In the instant case, like Huang, no property interest has been affected. Parkman has not lost pay or rank.[26] In other words, he holds the same property fights today that he held before his reassignment. Because the defendants have not deprived Parkman of a property right, he was not constitutionally guaranteed any process regarding his reassignment. See Stone, 855 F.2d at 172.[27]

B. Liberty Interest

Next, the court must decide whether Parkman has a liberty interest subject to procedural due process protections. If so, the court must also decide whether he was deprived of any procedural protections due him.

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[26] Parkman argues that loss in "rank" includes reduction in responsibilities and, in effect, prestige, thus allowing his claim to proceed. The court disagrees. The Fourth Circuit expressly stated that its holding in Huang was consistent with other circuits which have ruled that intradepartmental demotions do not implicate property interests. See Huang, 902 F.2d at 1142.

[27] After Parkman was permanently reassigned, Parkman's lawyer wrote to the University effectively conceding that Terry and the University had the right to take such an action. Although the court does not rest its decision on this concession, the court notes that the lawyer's statement is certainly consistent with the court's holding on this issue.

In Roth, the Supreme Court recognized that a liberty interest, in the context of public employment, could be implicated when "a person's good name, reputation, honor, or integrity is at stake because of what the government is doing to him." Roth, 92 5. Ct. at 2707. However, in Paul v. Davis, 424 U.S. 693 (1976), the Court clarified this holding and the holding in Board of Regents, supra by explaining that defamation or injury to reputation, absent an injury to some other right or status previously recognized by state law, does not deprive a plaintiff of any "liberty" interest protected by the Fourteenth Amendment. 424 U.S. at 708. Indeed, the Court characterized an individual's interest in reputation as "simply one of a number [of interests] which the State may protect against injury by virtue of its tort law, providing a forum for vindication of those interests by means of damages actions." Id. at 712.

The Court explained that when defamation occurs in conjunction with the denial of some other right or status previously recognized under state law — for example, termination of employment or demotion — it is the denial of that right or status which triggers due process requirements, and not the defamation. "It is this alteration, officially removing the interest from the recognition and protection previously afforded the State, which we [find] sufficient to invoke the procedural guarantees contained in the Due Process Clause of the Fourteenth Amendment." Id. at 711. The Court held that, apart from the due process afforded those previously recognized rights or interests, an individual's interest in his or her reputation is not constitutionally protected. Id. In short, harm or injury to reputation alone, even when inflicted by a state officer, does not deprive an individual of any liberty or property interest recognized by state or federal law. Id. at 712.

Fourth Circuit opinions subsequent to Paul have not hesitated to limit recovery for an injury to reputation to instances where stigmatizing remarks made in conjunction with a dismissal (as opposed to a demotion) have foreclosed plaintiff's future opportunities for employment. See, e.g., Johnson v. Morris, 903 F.2d 996(4th Cir. 1990) (demotion and transfer of state corrections employee, without loss of salary or benefits, does not implicate liberty interest). Other circuits have read Paul v. Davis in this way as well. See, e.g., Learned v. Bellvue, 860 F.2d 928, 933 (9th Cir. 1988). This court, therefore, concludes that plaintiff cannot succeed on his due process claim as he is, as were the plaintiffs in the cases listed above, an employee who was reassigned or demoted with stigmatizing charges, but with no attendant loss in pay or benefits. Plaintiff has not, therefore, been deprived of a liberty interest sufficient to trigger due process requirements of the Fourteenth Amendment.

Intentional Infliction of Emotional Distress (Sixth Cause of Action — All Defendants)

As to the claim for intentional infliction of emotional distress, defendants contend that any such claim is preempted by the South Carolina Workers Compensation Act. South Carolina Code section 42-1-540 of that Act provides:

> The rights and remedies granted by this Title to an employee when he and his employer have accepted the provisions of this Title, respectively, to pay and accept compensation on account of personal injury or death by accident, shall exclude all other rights and

> remedies of such employee. . . as against his employer, at common law or otherwise, on account of such injury, loss of service or death.

In Loges v. Mack Trucks, inc., 308 S.C. 134, 417 S.E.2d 538 (1992), the South Carolina Supreme Court held that this provision foreclosed an employee's claims against her employer for, inter alia, intentional infliction of emotional distress. See also Dickert v. Metropolitan Life ins. Co., 311 S.C. 218, 428 S.E.2d 700 (1993). As this ruling appears to be controlling, this court will grant the motion for summary judgment as to the intentional infliction of emotional distress claim.

The Claim for Injunctive Relief
(Seventh Cause of Action — University)

Since this action was initiated, plaintiff has retired from his employment with the University. Further, as the original findings were returned for EOP reinvestigation and that process was never concluded, it would not appear that there is any matter the court might order removed from plaintiff's file. It does not, therefore, appear that there is any injunctive relief which might be applied. This claim is, therefore, moot.

CONCLUSION

For all the foregoing reasons, the motion by the defendants for summary judgment as to all causes of action is granted and this action is hereby dismissed with prejudice.

IT IS SO ORDERED,

s/Joseph F. Anderson, Jr.
United States District Judge

March 29, 2001
Columbia, South Carolina

Exhibit 11

September 20, 1982

Mr. Thomas M. Parkman
819 Skyland Drive
Columbia, South Carolina 29210

Dear Mr. Parkman:

Upon the recommendation of the Search Committee and with the approval of the Provost, I am pleased to offer you an appointment in the Music Library as Librarian at a 12-month salary of $16,000, effective as of October 1, 1982.

An appointment at the rank of Librarian is in the tenure-track and is subject to the tenure, promotion, and other policies and procedures which are in effect on the effective date of this appointment. The effective date of your appointment for tenure consideration is October 1, 1982. All appointments are subject to the terms and conditions set forth in the 1978 Faculty Manual, a copy of which is enclosed. Copies of the Tenure and Promotion Policies and Procedures. of the

University Libraries are also enclosed for your information. The Faculty Manual is under revision at the present time.

We are enclosing an Academic Personal information Form that must be completed and returned to us along with your acceptance of this offer.

We would appreciate a written response of this offer as soon as possible. We look forward to hearing from you.

Very sincerely

Kenneth E. Toombs
Director of Libraries

KET/dg
encls.

Exhibit 12

UNIVERSITY OF SOUTH CAROLINA
COLUMBIA. S. C. 29208

September 21, 1982

To: Classification/Compensation Section, Personnel
From: Kenneth E Toombs, Director of Libraries
Re: Departmental Letter

1) ACTION: Promotion from a classified position to a non-classified position

2) NAME: Thomas M. Parkman

3) SOCIAL SECURITY NUMBER: 248-74-3141

4) CLASS: 9625 SLOT: 22

5) NEW TITLE: Librarian

6) NEW/REPLACEMENT: Replacement for Marvin C. Lamb

7) HOME DEPARTMENT: Thomas Cooper Library 30000

8) CHECK DISTRIBUTION/TIMECARD-TURNAROUND DOCUMENT: Turnaround

9) EFFECTIVE DATE: October 1, 1982

10) BASIS: 12 months

11) FULLTIME/PARTTIME: Fulltime

12) HOURS PER WEEK:

13) BUILDING: McMaster Phone 7-5139

14) SUPERVISOR'S SOCIAL SECURITY NUMBER: 257-60-3102

15) SUPERVISOR'S CLASS: 9625 SLOT: 41

16) SALARY: $16,000

17) ACCOUNTS: 30000 AOOO 51340 1OO%

18) JUSTIFICATION: To fill vacant position critical to the operation of the unit

19) NOTE: The LTA IV position 3454, Slot 4 will be retained

Exhibit 14

UNIVERSITY OF SOUTH CAROLINA
COLUMBIA, S.C. 29208

UNIVERSITY LIBRARIES
Office of the Director June 1, 1984

To: Kenneth E. Toombs, Director of Libraries
From: Davy-Jo S. Ridge, Associate Director of Libraries
Re: Annual Evaluation of Thomas Parkman, Music Librarian

Mr. Parkman has continued his dedicated and loyal service as Music Librarian this year. The operation of the Music Library has been frustrating at times due to the difficulty of hiring reliable student personnel. Mr. Parkman is to be commended for his patience in dealing with the Administration of the Music Department who must furnish funds for student personnel in the library.

Mr. Parkman continues his work on cataloging the backlog of recordings and is very conscientious in spending the book budget allocation for music. He maintains a very neat library operation and discusses any problems with the library operation with the Associate Director immediately. He needs to concentrate more on working with Music Faculty to give more sophisticated research assistance and to do more formal instruction on use of music resources.

As a professional member of the library staff, Mr. Parkman must cultivate diplomatically professional relationships with his library peers. His witty retorts are not perceived as amusing by his colleagues and he needs to curb facetious comments in professional conversations. He must join the Music and the South Carolina Library Associations this year and should plan to attend their meetings to broaden his professional development and perspective. He also needs to visit other music libraries to compare their operation with the USC Music Library and to look for improved methods of operation. Mr. Parkman worked hard to attain his professional qualifications and he must work as hard to cultivate a professional demeanor.

UNIVERSITY OF SOUTH CAROLINA
COLUMBIA, S. C. 29208

Exhibit 18

UNIVERSITY LIBRARIES
Office of the Director

June 5, 1986

To: Kenneth E. Toombs, Director or Libraries
From: Davy-Jo S. Ridge, Associate Director of Libraries
Re: Annual Evaluation of Thomas Parkman, Music Librarian

Thomas Parkman continued his dedicated and conscientious supervision of the Music Library in 1985-86. It was necessary during the year for Mr. Parkman to train a new support assistant and she has been trained veil. The problem of uncertainty of student assistants furnished by the Department or Music continues and Mr. Parkman is again to be commended for the patience and endurance needed to operate a library with this frustration.

Mr. Parkman maintains an orderly library operation which is housed in cramped quarters. He rearranged the collection for more efficient use when additional shelving was installed and he strictly enforces library policies. He makes every effort to secure long overdue books, scores and recordings from the music faculty who ignore circulation regulations. He is criticized for requesting the return or library resources by the same people who also complain that library materials are missing! Mr. Parkman continues to keep the Library Administration well informed or these and other problems arising at the Music Library.

Mr. Parkman is a member or the Music Library Association and he is urged to become more active in that organization as well as the South Carolina Library Association. He has tried this year to be more diplomatic and less abrasive in contacts with library users and colleagues. He must continue to concentrate on this problem. He should seek advice and assistance from the Music faculty and knowledgeable library colleagues in a positive manner to strengthen his technical skills. This is particularly true in the monitoring of orders submitted by the Music faculty and in clarifying cataloging entries which are very complicated.

Mr. Parkman should be more active in lecturing to music classes on music resources in 1986-87. He needs to gain confidence in this essential professional duty and prove his ability to effectively instruct library users in the proper use of the resources in the Music Library.

Mr. Parkman has completed ten years as the supervisor of the daily operation of the Music Library. He has done an excellent job of maintaining hours and the collection and training of personnel. In the coming year it is essential for his professional future that he prove also his excellence in technical competence and professional improvement and demeanor.

Exhibit 19

UNIVERSITY OF SOUTH CAROLINA
COLUMBIA, S. C. 29208

UNIVERSITY LIBRARIES

Office of the Director

February 24, 1987

To: Whom It May Concern
From: Davy-Jo S. Ridge
Associate Director Libraries
Re: Recommendation of Thomas M. Parkman
Music Librarian

Thomas Parkman was assigned to supervise the operation of the Music Library on a temporary basis in January 1976 as a paraprofessional employee. He was chosen because of his knowledge and personal interest- in music. He has also studied the flute with members of the Music faculty for many years.

Mr. Parkman proved to be a dependable and enthusiastic supervisor of the Music Library and was promoted in March 1976 and again in November 1980 in recognition of his conscientious work in the Music Library. In 1981 he was admitted to USC's College of Library and Information Science and continued to work full time while pursuing the M. L. degree on a part time basis. He was awarded the Masters of Librarianship in 1982 and was appointed to a library faculty position as Music Librarian in October 1982.

As Music Librarian Thomas Parkman is responsible for the daily operation of the Music Library, including planning the duties of a full-time library assistant, two graduate assistants and four undergraduate students. He advises the Music faculty on the selection of resources for the collection as well as forwarding his own requests. These requests include books, periodicals, scores and recordings. For several years Mr. Parkman has been responsible for cataloging the recordings added to the Music Library by purchase and gift.

Mr. Parkman maintains an orderly library operation which is housed in cramped quarters. He rearranged the collection for more efficient use when additional shelving was installed and he strictly enforces library policies.

He makes every effort to secure long overdue books, scores and recordings from the Music faculty who ignore circulation regulations. He is criticized for requesting the return of library resources by the same people who also complain that library materials are missing! Mr. Parkman continues to keep the Library Administration well informed of these and other problems arising at the Music Library.

Thomas Parkman is a loyal, dependable library faculty member. He has a quick, sharp, dry wit which takes some getting use to. His well developed sense of humor has helped him operate a library housed in poor quarters with insufficient and inexperienced personnel. He is very intelligent and is competent in the French, German and Latin languages and has taught Latin and French. He accepts criticism well and makes every effort to overcome areas of weakness.

Should additional information be needed about Mr. Parkman's career at USC, please feel free to contact me at 803-777-3142.

Exhibit 24

UNIVERSITY OF SOUTH CAROLINA
COLUMBIA, S. C.

June 16, 1988

Mr. Thomas H. Parkman
University Libraries
CAMPUS

Dear Mr. Parkman:

By action taken in the June 9, 1988 meeting of the University of South Carolina Board of Trustees, I am pleased to inform you that approval vas given to the administration's recommendation that you be tenured as Librarian.

Congratulations on your achievement!

Sincerely,

Thomas L. Stepp

/tjp

cc: President James B. Holderman
Acting Provost Chester Bain
Dr. George Terry
System Vice President Jane Jameson

Exhibit 26

UNIVERSITY OF SOUTH CAROLINA
COLUMBIA. S.C. 29208

THOMAS COOPER LIBRARY
Reference Department
Phone: (803) 777-4866
Fax: (803) 777-4661

TO: Arthur P. Young, Dean of Libraries
FROM: Carol M. Tobin, Interim Assistant Dean for Public Services
RE: Annual Evaluation of Thomas Parkman, Music Librarian

DATE: July 14, 1990

Thomas Parkman has had to deal this year with a difficult personnel situation involving the theft of items from the collection. As a result of this he has initiated an inventory of the relevant parts of the collection.

He was also involved this year in planning for a much needed enlargement of the Music library (unfortunately not approved) and preparing a proposal for the acquisition of additional audio-visual equipment. Mr. Parkman continued his collection development work in the area of music with special emphasis this year on acquiring compact discs.

In addition to the administrative duties involved in running a branch library, and supervising students and classified staff, Mr. Parkman has continued to provide specialized bibliographic instruction for master's and doctoral candidates in music.

Mr. Parkman in the coming year should consider seeking opportunities, perhaps on committees, to interact more with librarians in Thomas Cooper. He might also want to consider a greater involvement in professional activities.

Exhibit 63

November 10, 1995
Mr. Thomas Parkman
VICE PROVOST AND DEAN
Music Library
LIBRARIES AND INFORMATION SYSTEMS

USC-Columbia

Dear Mr. Parkman:

I have been informed by the Office of Equal Opportunity Programs that a second formal complaint regarding alleged actions of sexual harassment has been filed with that office. Since this complaint has been filed by a student employed by the Music Library, I agree with the strong recommendations made by the Office of Equal Opportunity Programs that you be temporarily reassigned to a special project outside of the Music Library facility.

I have consulted with the Provost on this decision and he agrees that this action is appropriate in order to protect the University from failing to react in the best interest of everyone involved in this matter. This reassignment of duties will continue until these complaints are thoroughly investigated by the Office of Equal Opportunity Programs and some resolution of this matter is accomplished.

Your base pay and benefits will remain intact until such time as the investigation has been completed and a determination can be made with respect to your employment. You will be provided with suitable workspace to begin work on a special project related to the Music Library holdings situated in our remote storage facility. You will continue to report directly to Dr. Allen Stokes, University Librarian for Special Collections. This reassignment is to begin immediately. If you need to retrieve personal items for your use during this assignment, I will provide you adequate time within the Music Library to retain these possessions.

Once this has occurred, you are not to return to the Music Library until this investigation is completed. You are also directed not to communicate with any full-time or student employees of the Music Library until this investigation is completed.

If I can provide any additional information regarding this action, I will be happy to discuss it with you.

Sincerely,

George D. Terry

GDT/ cc

cc: Dr. James Moeser
Mr. Bobby Gist V
Mr. Walter Parham

Exhibit 72

February 14, 1996

VICE PROVOST AND DEAN
LIBRARIES AND INFORMATION SYSTEMS

Personal and Confidential

Mr. Thomas M. Parkman
Music Library
University of South Carolina
Columbia, SC 29208

Re: Written Reprimand

Dear Mr. Parkman:

This letter serves as a written reprimand for violation of the University of South Carolina's policy prohibiting sexual harassment (EOP Policy 1.02). I am advised that the University's Office of Equal Opportunity Programs (EOP) has investigated two separate complaints of sexual harassment against you. As a result of the investigation, the EOP office determined that you had subjected University faculty, staff, and students to a sexually hostile work environment. You are advised that violation of the Sexual Harassment Policy is deemed to be misconduct related directly and substantially to your fitness as a faculty member which is not protected by the Constitution or laws and is a clear interference with the academic functions of the University.

Previous counseling sessions concerning inappropriate physical contact and unwelcome sexually suggestive and offensive comments have not prevented you from engaging in offensive conduct. Therefore, effective immediately, you are directed to refrain from having any physical contact with faculty, staff, students, or visitors in the workplace which could be viewed as sexually suggestive. You are further directed to refrain from making unwelcome and sexually suggestive and/or offensive comments to University faculty, staff, students, or visitors. Any future violations of this nature will be considered as an additional incident of misconduct related directly and substantially to your fitness as a faculty member and will result in a recommendation that tenure revocation proceedings be initiated.

You are required to attend sexual harassment prevention training by March 26, 1996. Toward this end, you are to register for one of the ongoing sexual harassment workshops being offered through the Training and Development Office of the Division of Human Resources. You are to inform me of the date you will attend training and provide me proof of your attendance.

You are permanently reassigned to the position of Special Projects Librarian, effective immediately. In this assignment you will report directly to Dr. Allen Stokes, University Librarian for Special Collections. Although your duties will consist primarily of providing bibliographic control of Special Collections materials, Dr. Stokes, at his discretion, will assign you to other projects within his department. You will have no supervisory responsibilities. You will be provided suitable work space for your new assignment. Your current annual salary will not be affected by this reassignment.

I will be available to answer any questions you may have about this document. If you have questions about your new assignment, you should contact Dr. Allen Stokes.

Sincerely,
George D. Terry

I have received, read, and understood the contents of this written reprimand.

Thomas M. Parkman
Special Projects Librarian

GDT/cc

cc: Jane M. Jameson
Vice President for Human Resources

Bobby D. Gist
Executive Assistant to the President for Equal Opportunity Programs

Allen Stokes
University Librarian for Special Collections

Exhibit 86

THE UNIVERSITY OF SOUTH CAROLINA
South Caroliniana Library, Columbia, SC 29208

June 20, 1996

Mr. Thomas M. Parkman
Division of Special Collections
University Libraries

Dear Thomas:

I would like to reiterate the points that we discussed yesterday with regard to your duties in the South Caroliniana Library. The normal workday for faculty and staff in the library is 8:30 am to 5:00 p.m. You are entitled to two fifteen-minute breaks, one in the morning and one in the afternoon. The lunch period is one hour.

Your immediate duties are to inventory the collection in the book division and to compile a report on all titles whose presence in the collection cannot be verified. In order to monitor the progress of your work on the inventory, I would like a weekly report on the number of shelves read. Your second area of responsibility is photoduplication orders in the Book Division and the Manuscripts Division. Student assistants may continue to do some photocopying, but you will have primary responsibility for ensuring that patron orders are completed in a timely manner.

Your responsibility for photoduplication will be an ongoing duty. Other duties will be assigned when you have completed the shelf inventory.

Sincerely,

Allen Stokes, Director
South Caroliniana Library

Exhibit 87

Position Description

Duties:

Inventory Books Division Collection - duty includes:
Shelf read to verify shelf list corresponds with call numbers, titles, and editions actually on shelves.
Report on all titles whose presence cannot be verified.

Identify and list all volumes which have conservation needs.
Insure that shelves are in correct order.
Prepare volumes for bar coding and off-site storage:
List contents of each box and make duplicate copies of each list.
Label each box and list appropriately.
Insure that each item is cataloged in USCAN.
Make careful note on appropriate shelf list card that volume is being sent for bar coding and off-site storage.
Search for missing items that staff has designated DNF (Did Not Find)
Serve on Reference Desk as needed.
Assist staff in other duties, such as photocopying, as required.

Responsibilities:

Work day of 7.5 hours, normally 8:30 am to 5:00 pm, with one hour for lunch.
Weekly progress report to supervisor on status of inventory.
Weekly report to supervisor on number of DNF's located and placed properly on shelf.
Inform supervisor of when planning annual leave.
Call supervisor as soon as possible when reporting sick.

I have read and understand that these are the duties and responsibilities of my position at the South Caroliniana Library.

Signed______________________________
Date________________________________
Thomas M. Parkman

Exhibit 92

November 19, 1996

Dr. John Palms
President
Osborne Administration Building
Campus Mail

Dear President Palms:

The Faculty Grievance Committee has reviewed the grievance of Thomas M. Parkman, who was given a written reprimand for violating the University of South Carolina Sexual Harassment Policy. Mr. Parkman and his attorney, Herbert W. Louthian, appeared before the committee on October 9, 1996. Also, present at that meeting were Dr. George D. Terry, Associate Provost, Dr. Ward W. Briggs, Jr., Carolyn Contra and John Farley.

Mr. Parkman and Mr. Louthian contend that the procedures followed by the University Office of Equal Opportunity Programs (EOP) in the investigation denied Mr. Parkman's right to due process. They assert that Mr. Parkman's ability to respond to the charges was impeded because the alleged acts were not presented with specificity and that despite requests they were not provided with the names and statements of witnesses.

After receiving extensive statements from those present at the meeting, examining all documents submitted by Mr. Parkman and EOP, and reviewing the University of South

Carolina Sexual Harassment Policy, the committee concludes that the procedures followed in the investigation resulted in a denial of Mr. Parkman's right to due process. Mr. Parkman, through his attorney, made specific requests for the names of witnesses and witness statements. The EOP refused to provide information and told the grievant that he was not entitled to the information. A review of the Sexual Harassment Policy reveals no such prohibition.

In fact, section II.4.g (at page 13) of the Policy provides that while information received during the investigation is to be treated as confidential, the EOP "shall make it available only to the parties and to appropriate University officials." Similarly, sections II.G.3.e.(3) and (5) of the Policy provide that the complaint should include "the specific acts complained of, including dates and location" and "the names of any witnesses to the harassment", respectively. The committee agrees that information of this type is necessary for a charged party to identify witnesses and to present a defense to the accusations.

The committee was also troubled by the fact that a previous allegation of sexual harassment was considered in the EOP's investigation. Mr. Parkman informed the committee that the charge had been resolved in his favor. Dr. Terry confirmed this and indicated that although actions complained about were not sexual in nature, he had instructed Mr. Parkman to refrain from such actions in the future. Dr. Terry stated that Mr. Parkman's failure to follow this instruction was the reason for his reassignment.

Under the heading, "Academic Grievance Procedures" on page 31 of The Faculty Manual is written, "If the (Faculty Grievance) committee finds that there are grounds for a grievance, the committee shall attempt to resolve the matter through mediation or other appropriate action." In accordance with this direction the committee refers this matter to Walter H. Parham, University of South Carolina Counsel, for mediation with Mr. Parkman's lawyer, Herbert Louthian. If the matter cannot be successfully mediated within a reasonable period of time, the committee remands this case for reconsideration to EOP with instructions that any subsequent investigation be conducted in accordance with the procedures noted above. The committee does not address the matter of Mr. Parkman's reassignment since it was based on an independent reason within the appropriate scope of Dr. Terry's supervisory authority.

Respectfully,

Philip J. Michaels, Ph.D.
Chairperson, USC Faculty Grievance Committee

cc: Donald Greiner
George Terry
Walter Parham
Thomas Parkman
Herbert Louthian
Bobby Gist

Exhibit 106

THE OFFICE OF EQUAL OPPORTUNITY PROGRAMS

The Office of Equal Opportunity Programs was established by the President of the University to provide equal opportunity and affirmative action in education and employment for all persons regardless of race, color, religion, sex, national origin, age, disability, or veteran status. The President appoints the Executive Assistant to the President for Equal Opportunity Programs to implement these functions. The Executive Assistant to the President is responsible for the overall operation of the office, and this individual is responsible for planning, developing, administering and evaluating the University's equal opportunity/affirmative action policies and practices to insure compliance with applicable federal and state statutes relating to nondiscrimination in employment and education.

DISCRIMINATION COMPLAINT PROCESSING PROCEDURES

1. PRE-COMPLAINT REVIEW (Who May File)

A. An individual (i.e., person, student, faculty, staff member or applicant) may file a complaint or seek information about illegal discrimination at the University of South Carolina based on race, color, religion, sex, national origin, age, disability, or veteran status through the Office of Equal Opportunity Programs (hereinafter referred to as EOP office). Inquiries may be made by telephone, in person, or in writing.

B. The purpose of pre-complaint review is to provide an individual an opportunity to discuss confidentially the specifics of his/her complaint and to receive guidance and information on the administrative procedures followed by the Office of Equal Opportunity Programs should a complaint be filed.

C. It is not necessary for an individual to reveal his or her identity in seeking information about filing a possible discrimination complaint.

D. As a general rule, no formal administrative action will be taken on anonymous complaints of discrimination. However, the designated EOP official receiving the anonymous complaint may, depending on the seriousness of the incident described, bring the anonymous charge to the attention of the Legal Department, the department head and possibly the alleged offender.

E. An individual, faculty or staff member, or student who is made aware of an incident of illegal discrimination should refer the person(s) to the Office of Equal Opportunity Programs for assistance.

F. After receiving information or pre-complaint counseling from the BOP office, an individual may:

    1. choose not to pursue a complaint; or

2. decide to take action directly with the alleged offender/respondent by verbally or in writing requesting the individual to cease the discriminatory behavior; or

3. report the matter to the alleged offender's/respondent's supervisor or department head asking that steps be taken to ensure that the offending behavior ceases; or

4. ask a designated university official to pursue informal resolution of the matter; or

5. proceed with a formal complaint of discrimination through the Office of Equal Opportunity Programs.

G. If the identity of a complainant is known and if the Office of Equal Opportunity Programs has not been involved in the resolution of a problem, the EOP office should make follow-up contact within a reasonable period of time to ascertain whether the matter has been resolved and proceed to close its file if all parties agree to the resolution.

II. INFORMAL RESOLUTION PROCESS FOLLOWED BY THE OFFICE OF EQUAL OPPORTUNITY PROGRAMS FOR COMPLAINTS OF DISCRIMINATION

A. Informal complaint resolution focuses on conciliation, not sanctions; however, disciplinary action including an oral or written warning may be issued if warranted. The aim of informal resolution is to ensure that the discriminatory behavior ceases and that the matter is resolved promptly at the lowest possible level to effect conciliation. The alleged offender may be asked, politely but firmly, to cease the offensive behavior. He or she may be told of the identity of the complainant at this stage. Investigation is optional, since the emphasis is not on establishing guilt or innocence, but on stopping the alleged discrimination.

Informal complaint resolution may be achieved by any of the following steps:

1. action taken by the complainant to address the matter directly with the alleged offender; or

2. action to negotiate a resolution taken by the alleged offender's supervisor or department head, after consultation with the Office of Equal Opportunity Programs upon the request of the complainant; or

3. mediation undertaken by the Office of Equal Opportunity Programs.

B. If mediated, the Office of Equal Opportunity Programs, the supervisor or department head, as applicable, is required to prepare a memorandum for the record indicating the complaint, the action taken and the resolution achieved. This memorandum will be filed in the Office of Equal Opportunity Programs permanent files.

C. The Office of Equal Opportunity Programs shall decide whether a complaint warrants an attempt at informal resolution. In some cases, a formal investigation may be appropriate and must be pursued to protect all parties to the complaint.

III. FORMAL PROCEDURE FOLLOWED BY THE OFFICE OF EQUAL OPPORTUNITY PROGRAMS FOR COMPLAINTS OF DISCRIMINATION

A. Filing a Formal Complaint of Discrimination

To initiate a formal complaint an individual (person, student, faculty, staff member, or applicant) is required to complete an official complaint form which may be obtained from the Office of Equal Opportunity Programs. The complaint is then submitted to the EOP official designated to receive the complaint. The EOP office shall be the principal investigator of the complaint.

In order to file a complaint, the complainant must be able to:

1. stale a cause of action based upon one's membership in a protected class: race, color, religion, sex, national origin, age, disability or veteran status and the complaint must be;

2. timely, the date of the alleged violation(s) must have occurred within the past 180 days, and the complainant must be able to identify, with specificity, the dates of the alleged offense(s), and the complaint must be;

3. reduced to writing and signed before a notary public or EOP official, and;

4. must indicate some harm that the complainant has suffered, is suffering, or will suffer as a result of their protected class membership status, and;

5. specify the relief the complainant is seeking as a result of the complaint.

B. Acknowledging Receipt of Form 2 Complaint of Discrimination

After receipt of a discrimination complaint form, the EOP designated investigator shall meet with the complainant as soon as possible, generally no later than five work days after receiving the complaint. The purpose of this meeting is to review the complaint and clarify issues which may be unclear to the complainant or to the BOP Investigator. The complainant will be asked to identify witnesses to the incident(s) or other possible victims of discrimination by the same alleged offender, steps taken to resolve the matter, and the outcome being sought through this process. The complainant will be advised that notice of the charge of discrimination and a copy of the complaint will be provided to the alleged offender.

C. Notice of Charge/Service of Complaint /Discrimination

The Notice of Charge will contain the name of the complainant, the specific allegations made (date, places and nature of the discrimination) and a copy of the complaint. The Notice of Charge is processed as follows:

1. The Notice of Charge along with a copy of the complaint will be provided to the alleged offender or his/her representative by the EOP Investigator, or other designated official, in a timely manner, normally within one week of receipt of the formal complaint. The Notice of Charge and copy of complaint will be

served either personally or by certified mail.

2. The alleged offender shall answer the charge(s) in writing within ten (10) University work days of receiving the Notice of Charge. The time limit to provide a written response may be extended with the approval of the designated official handling the complaint. If the alleged offender fails to respond, notice of such failure to respond will be provided to the department chair/department head of the alleged offender and the investigation will proceed. The alleged offender may be compelled by the University to respond to a charge of discrimination, to the extent permitted by or consistent with federal and state law.

3. A copy or summation of the response to the Notice of Charge will be provided to the complainant by the designated EOP official.

D. Negotiated Resolution of Complaint of Discrimination

After reviewing the response to the charge, the EOP designated official may attempt a negotiated resolution of the complaint which is agreeable to both parties. The proceedings may be terminated by the designated official upon receipt of a written resolution of the complaint acceptable to both parties. In those instances, a formal negotiated settlement agreement will be developed and signed by all parties.

E. Investigating Formal Complaints of Discrimination

The process of formal investigation includes the following:

1. An investigator will be assigned by the Executive Assistant to the President for Equal Opportunity Programs.

2. The investigator will interview separately the complainant, alleged offender, and witnesses identified by each party.

3. The investigator may meet with the complainant and alleged offender together if, in his/her judgment, such a meeting could foster a resolution to the problem and the complainant and alleged offender agree to such a meeting.

4. Normally the investigation should be completed within 30 University workdays of receipt of the formal

complaint; however, if warranted by the circumstances of the complaint, this time may be increased at the discretion of the investigator.

5. Based upon the information obtained during the investigation, the investigator shall issue a report of the findings and make appropriate recommendations to the Executive Assistant to the President for Equal Opportunity Programs. The investigator, as appropriate, may consult the Vice President for Human Resources, the Vice President for Student Affairs, and the Legal Department regarding the appropriate recommendation of disciplinary action to be taken.

   The report of findings and recommendations shall include a statement of the complaint, a chronology of the investigation (who was interviewed and by whom), the information discovered, a list of documents pertinent to the investigation, the conclusions reached, the investigators' recommendations, the investigator's name and date of the report.

   If disciplinary action is recommended, the report shall be presented, as appropriate, to the President, Provost, Vice President for Human Resources, Vice President for Student Affairs, Chancellor, Dean, Department Chair or Director by the Executive Assistant to the President for Equal Opportunity Programs. The EOP designated official will then notify the complainant and the alleged offender, in writing, of the findings of the investigation within five University work days after the conclusion of the formal investigation. This notice will not include the recommendations. The investigative record shall be maintained by the Office of Equal Opportunity Programs.

F. Findings

There are two categories of findings: (1) no reasonable cause to believe discrimination occurred, or (2) reasonable cause to believe a violation has occurred.

1. If no reasonable cause is found, the charge is dismissed. The complainant is advised that if he or she is dissatisfied with the decision, a Presidential Review may be requested, or a complaint may be filed with Federal or State

agencies which enforce compliance with laws prohibiting illegal discrimination. [Request for a Presidential Review must be submitted in writing to the President within five University workdays of receipt of the notice of findings. A Presidential Review does not guarantee an audience with the President as opposed to a review of the record.]

2. If a reasonable cause violation is found, appropriate disciplinary action shall be taken, where appropriate, by the President, Provost, Vice President for Human Resources, Vice President for Student Affairs, Chancellor, Dean, Department Chair or Director, who must notify the charged party, in writing, of the action to be taken, the reasons for the action and avenues of appeal. The nature of the discipline to be imposed on the offender/charged party shall not be communicated to the complainant, but the complainant may be informed

whether the offender will be disciplined. The charged party may appeal the findings by requesting a Presidential Review. If the disciplinary action taken is grievable, it may be grieved through appropriate channels; however, a copy of the reasonable cause violation will be made a part of the University's defense.

G. Sanctions/Disciplinary Action

Persons found to be in violation of the University's anti-discrimination policy will be subjected to disciplinary action which may include, but not limited to, oral or written warnings, suspension, transfer, demotion or dismissal and request for revocation of tenure procedures in cases involving tenured members of the faculty.

H. If the complainant can demonstrate that he/she has suffered a loss as a consequence of illegal discrimination, a remedy may be recommended. The objective is to restore the complainant to his/her status before suffering the consequences of the discrimination.
A remedy may consist of a reassignment, transfer, letter of apology, or other appropriate action. A remedy is not subject to appeal through the Presidential Review process.

IV. PRESIDENTIAL REVIEW/APPEAL

A request for a Presidential Review shall be made in writing to the President by either party to the complaint within five University workdays of receiving notification of the findings at the conclusion of the formal investigation.

A. Composition of Review Panel

1. Within five University work days after receipt of a request for a Presidential Review/Appeal, the President or the President's designee will appoint an impartial Review Panel of three individuals who will conduct a closed review of the record and provide recommendations to the President.

2. No Review Panel member will be appointed from the college or department of either the complainant or the alleged offender.

3. The Chairperson of the Review Panel will be appointed by the President or the President's designee.

B. Consideration of the Complaint by the Review Panel

1. The President's Review Panel shall conduct a review of the record as soon as possible, normally within seven

University work days of the appointment of the Panel. The EOP office will be required to present the rationale for its recommendations/findings.

2. Both parties may be present during the presentation of the case to the Review Panel by the EOP office. Questioning of witnesses is at the discretion of the Review Panel and shall be conducted solely by members of the Panel.

3. Each party shall have the right to provide additional evidence in writing relevant to the complaint.

4. Each party to a complaint may be accompanied to the review by an advisor or legal counsel. The parties shall notify the chairperson of the Review Panel at least five (5) University work days in advance of the Presidential Review hearing if he or she will be assisted by an advisor or counsel.

5. The Chairperson of the Review Panel shall be authorized to request additional files, records, and documents relevant to the complaint, including the report of the findings and recommendations of the EOP investigator.

6. The Review Panel shall report its findings and recommendations to the President in a timely manner, normally within five University work days of the conclusion of its review.

7. The President or the President's designee shall issue a decision on the matter including appropriate sanctions, and will notify' the parties of his or her decision as soon as possible after the receipt of the Review Panel's findings.

8. There is no further internal appeal under these procedures available to the complainant. The charged party may appeal disciplinary action through the student grievance procedure, the employee grievance procedure or faculty grievance procedure, as applicable, provided the disciplinary action is subject to appeal through one of these processes. Complainants may also have the right to file a complaint with the S.C. Human Affairs Commission, the Office of Civil Rights, U.S. Department of Education, or the Equal Employment Opportunity Commission, as appropriate.

9. Every effort shall be made to conclude the Presidential Review process within

thirty University work days after appointment of the Presidential Review Panel.

V. RELATED PROCEDURES

A. Suspension or Withdrawal of Complaints of Discrimination

1. The University may suspend its investigative proceedings at any stage if the designated EOP official receives a written resolution of the complaint agreed to by both parties.

2. A complaint, or any part thereof, may be withdrawn at any time upon receipt of a written request from the complainant that the complaint be withdrawn. The charged party will be notified of the withdrawal of the complaint. Such withdrawal shall be without prejudice to the rights of the complainant to refile the complaint at a later date, so long as the matter is timely (within 180 days of the date of the alleged violation).

B. Dismissal of Complaints of Discrimination

1. A complaint may be dismissed if the designated official investigating the complaint determines that the

complaint is without merit, or the accusations/charges are false.

2. A complaint may be dismissed if the designated official in the EOP office determines that the complainant has not cooperated and the action or actions of the complainant impairs or compromises the EOP office's ability to conduct an objective investigation. In such instances, where applicable, the EOP office will cease its' investigation, remove itself and refer the complainant to the appropriate federal/state administrative agencies that are empowered to conduct investigations/resolution of illegal/prohibited discrimination.

3. Willful false accusations by complainants or abuse of the EOP process may result in actions and sanctions, to include reprimand, suspension, demotion, or dismissal.

C. Appealing a Sanction

As a result of an investigation in which reasonable cause is found to believe a discriminatory violation has occurred, disciplinary action may be taken against the charged party. If the disciplinary action is a demotion, dismissal, or suspension, it may be grievable by staff employees under the University Grievance Procedure administered by the Division of Human Resources. Faculty should consult the Faculty Manual for appropriate grievance procedures. Students may appeal disciplinary actions to the Judicial Appeal Board. Information on the Judicial Appeal Board is contained in The Carolina Community: Student Policy Manual.

VI. RECORD KEEPING

A. While a complaint is being investigated all documentary evidence regarding the complaint must be maintained in the confidential files of the officials handling the complaint.

B. After final resolution of the complaint within the university system, all records regarding the complaint must be transferred to the confidential files of the EOP office.

C. Access to these confidential records shall be on a need to know basis only. Persons who may have access include: the President of the University, Provost, Chancellor or Dean of the campus, the Legal Department, the members of the President's Review Panel, the Vice President for Human Resources and/or Campus Personnel Director, Campus Affirmative Action Coordinator, the Vice President for Student Affairs or equivalent campus student affairs official, and any other designated official appointed by the President.

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VII. CONFIDENTIALITY

A. Every effort shall be made, to the extent possible, to protect the privacy of the persons involved in the complaint.

B. The following steps should be taken to help assure confidentiality:

1. The number of persons with knowledge of the complaint shall be kept to a minimum. Only persons with a need to know shall be notified of the complaint.

2. The BOP office shall exercise discretion in the setting of dates and locations of interviews, and the placing of, and responding to, telephone calls related to the complaint.

3. The BOP office will interview, in person, individuals named as witnesses by parties to the complaint. Solicitation of comments from others, unless there is reason to believe they

have relevant knowledge about the complaint, will be avoided.

4. Correspondence concerning the complaint shall be issued in sealed envelopes and marked "Confidential to the Personal Attention of the Addressee."

VIII. EXCEPTIONS

In exceptional circumstances, depending on the nature of the alleged offense, it may be necessary for the President, upon the advice of the Vice President of Human Resources, the Vice President for Student Affairs and the General Counsel, to suspend/remove an alleged offender prior to beginning a formal investigation of a complaint. Reinstatement or further disciplinary action may be appropriate based upon the findings. The disciplinary action may be appealed as outlined in Section V.C. above.

IX. NON-RETALIATION

It shall be deemed a violation of the University of South Carolina's policies and procedures for any person to retaliate, intimidate or take reprisals against a person who has filed a complaint, testified, assisted or participated in any manner in the investigation/resolution of a complaint of illegal discrimination as filed with the Office of Equal Opportunity Programs. Appropriate sanctions/disciplinary actions shall be taken against any person who has been found to have violated this policy.

Exhibit 136

State of South Carolina

County of Richland

Affidavit of John D. Farley

Personally appeared before me John D. Farley who deposes and says:

1) My name is John D. Farley. I live at 539 Alexander Circle, Columbia, South Carolina, 29206.

2) I worked in the Music Library for two and a half years, during which time I have never observed any act resembling sexual harassment by Mr. Parkman. He always acted professionally and dedicated himself to preserving the integrity of the library.

3) Jennifer Ottervik made no secret of her personal contempt for Mr. Parkman and of her desire to have him removed as Music Librarian. She acted unprofessionally, displaying an uncontrollable temper. She insulted Mr. Parkman on numerous occasions and disclosed confidential information, while in the presence of others.

4) I believe Ms. Ottervik has acted in ways that furthered her own interests rather than those of the Music Library for which she was hired.

5) The present investigation by Ms. Ottervik and Equal Opportunity Committee attempts to establish me as a victim of a crime that never happened. When I refused to cooperate with these false allegations, Ms. Ottervik and EEOC resorted to their own form of harassment. Ms. Ottervik would belittle my presence in the library. She spied on students to the point of discomfort and lied about my actions to the EEOC.

6) I believe Mr. Parkman has been charged with sexual harassment because he is different. He is neither perverse nor incompetent. He is the scape-goat for a situation for which he is not at fault. I find these actions distasteful and unacceptable.

7) I did not wish to be a part of this situation and I resigned my position with the Music Library on November 21, 1995.

John D. Farley

Sworn to before me this 13 day of August, 1996

Karin Winstead /Notary Public for South Carolina

My Commission Expires: February 25, 2003

Exhibit 138

For two years, from August 1993 to May 1995, I worked for Thomas Parkman as a librarian for my graduate assistantship. During the period I was in his employ I at no time felt threatened or offended by his behavior towards me. I came to know Mr. Parkman well and enjoyed both my time in the library and the occasions the library staff would get together outside of work. A large part of the fun we had came from our many different kinds of humor and different backgrounds. Mr. Parkman's wit and sense of humor contributed to this friendly atmosphere.

The atmosphere of this mutual esteem was altered when Jennifer Ottervik became assistant librarian of the music library. Ms. Ottervik became increasing hostile towards members of the staff, particularly Mr. Parkman. This hostility had nothing to do with any impropriety on Mr. Parkman's part. At no time did those of us who knew Mr. Parkman share Ms. Ottervik's feelings. Her hostility largely came from her wanting Mr. Parkman's position as head librarian. That this was a fact was no secret to the employees of the library. Ms. Ottervik made comments concerning her dislike of Mr. Parkman's methods and her doubts concerning his ability to run the library. Furthermore, she also talked a great deal about her plans for the library if she were head librarian. Her ideas conflicted with Mr. Parkman's and on many occasions the employees of the library found themselves in a situation of having to choose sides between what Mr. Parkman wanted done and what Ms. Ottervik wanted. I was chastised twice by Ms. Ottervik for following Mr. Parkman's procedures over her's, despite the fact that Mr. Parkman was the head librarian.

These strained relations became worse as Ms. Otterik began to take steps towards causing the removal of Mr. Parkman from his position. Ms. Ottervik began questioing each student in the library about Mr. Parkman's behavior towards them. She questioned not only the employees, but the patrons as well. These questions regarded his sense of humor that we all appreciated but that Ms. Ottervik portrayed as threatening when she questioned students about his behavior. I was one of the many questioned by Ms. Ottervik. I was questioned on more than one occasion. However, her most thorough questioning occurred outside the Thomas Cooper Library in early June 1995, shortly after the 6th. She asked me if Mr. Parkman had ever behaved towards me in a way that made me feel threatened in what she termed "that way." She asked me about his patting me on the back and that she had asked other students the same questions she was asking me.

Mr. Parkman's actions were not threatening to his employees. We knew him well enough that if we ever had a complaint at any time, we could have talked to him about it and know that our jobs were secure and he would have treated our complaint fairly.

Iredell County, NC

8-5-96 Eric N. Osborne NCDL 5829589 Exp. 112/23/00

Notary: Patty Claton Commission exp.: 12/28/99

Exhibit 170

THE FACULTY MANUAL – COLUMBIA CAMPUS

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FACULTY ORGANIZATION

FUNCTIONS

The Board of Trustees is the governing body of the University, arid the powers of the President and the faculty are delegated by the Board in accord with its policies. The faculties of the Aiken, Columbia. arid Spartanburg campuses. subject to the review of the President and the Board of Trustees, have legislative powers in all matters pertaining to the standards of admission, registration, requirements for arid the granting of degrees earned in course, the curriculum, instruction, research, extracurricular activities, discipline of students, the educational policies and standards of the University, and all other matters pertaining to the conduct of faculty affairs, including the discipline of their own members.

Proposals from any of the University's academic units which pertain to the Faculty's legislative competency shall be forwarded to the Board of Trustees by the President, only after such proposals have been considered by the appropriate faculty committees, and shall be accompanied by the legislative judgment of the Faculty Senate or of the University Faculty as a whole, whichever may be deemed appropriate.

As such occasions arise, the faculties shall have the opportunity to consider the election or appointment to the office of the President of the University arid all pertinent academic officers and, through an appropriate committee, shall communicate their views thereon to the Board of Trustees.

MEMBERSHIP

The University faculty shall consist of the President, the Provost and all academic vice presidents and academic associate and assistant vice presidents; all deans, associate and assistant deans of all schools and colleges; professors, associate professors, assistant professors, all full-time academic instructors and full-time lecturers who are not degree candidates at the University of South Carolina; visiting

FACULTY ORGANIZATION

Faculty members, emeriti professors, the Vice President for Student Affairs, Vice Provost for Libraries and Information Systems, professional librarians, Director of Admissions, and such other persons as the faculty sees fit to elect. Status of individuals on the other campuses of the University is covered in separately issued manuals.

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FACULTY GRIEVANCE COMMITTEE

This committee shall consider individual grievances brought before the committee by members of the faculty including full-time and part-time members, research professors, lecturers, and visiting professors. The committee shall examine alleged grievances, and when in the judgment of the committee a grievance is determined to exist, it shall attempt to resolve the matter through mediation or other appropriate action. All six members of this committee shall be tenured faculty. See also "Academic Grievance Procedures."

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REGULATIONS AND POLICIES

AFFIRMATIVE ACTION POLICY STATEMENT

The University of South Carolina System is committed to the policy and practice of affirmative action and equal opportunity in education and employment for all qualified persons regardless of race, sex, age. color, religion, national origin, disability or veteran status.

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APPOINTMENTS

QUALIFICATIONS AND REQUIREMENTS

As a general policy, the qualifications for appointments are as set forth below. These requirements are not intended as justification for automatic promotion; conversely, justified exceptions may be made if warranted.

Professor. To be eligible for the rank of professor, a faculty member must have a record of outstanding performance normally involving both teaching and research, or creativity or performance in the arts, or recognized professional contributions.

As a general guideline, the faculty member is expected to hold the earned doctor's degree and to have at least nine years of effective and relevant experience.

Associate Professor. To be eligible for the rank of associate professor, a faculty member must have a record of effective performance usually involving both teaching and research, or creativity or performance in the arts, or recognized professional contributions. Normally, the faculty member is expected to hold the earned doctor's degree and must possess strong potential for further development as a teacher and as a scholar.

Assistant Professor To be eligible for the rank of assistant professor, a faculty member normally will be expected to hold the earned doctor's degree or its equivalent and must possess strong potential for development as a teacher and as a scholar.

Instructor to be eligible for the rank of instructor a faculty member must normally hold the master's degree plus substantial additional graduate study such as evidence of having fulfilled the requirements for admission to candidacy for the doctor's degree.

The qualifications for appointment to positions bearing titles which are less frequently used (lecturer, research professor, etc.) can be found in the Policies and Procedures Manual.

APPOINTMENT PROCEDURES

When it is established by agreement of the Provost, the dean, and the department chair that a vacancy exists, it shall be the duty of the department chair or dean to make recommendations for appointments in the manner prescribed in the Policies and Procedures Manual. All vacancies are advertised in accordance with affirmative action and state and federal law.

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TENURE AND PROMOTION PROCEDURES

The procedures set forth below governing tenure and promotions shall apply to all undergraduate, graduate, and professional schools, colleges, or divisions of the University of South Carolina except the Four-Year Campuses and the Regional Campuses. The primary responsibility for the operation of all tenure and promotion procedures shall rest with the tenured members of the faculty of each department or nondepartmentalized school or college. Final authority for recommending tenure or promotion to the University Board of Trustees shall reside with the President. Final authority for approving recommendations of tenure and promotion rests with the Board of Trustees.

Tenure and promotion decisions are the most important made by the University, for they will determine the quality of the faculty for decades to come. While the decision to promote a faculty member rests largely on an assessment of evidence of past achievements or promise, the decision to tenure rests largely on anticipation of continued professional growth and development in directions of special relevance to the core missions of the unit and University.
Departments and colleges are urged to be very selective in their recommendations, particularly for tenure. The three prime, missions of the University are teaching, research, and service. In any promotion process, consideration should be given to performance in all three of these areas. However, the three need not be treated equally and their application depends upon the definition of the position to which the

individual has been appointed and to which the candidate is to be promoted.

The University is committed to achievement in all three areas of its mission. For many faculty members service is a major function, interrelated with both teaching and scholarship. Collectively, the faculty profile of the University and of any academic unit should reflect a record of high quality teaching, research, and service, but because it is generally recognized that the strength of any University lies in its diversity of talents, not every faculty member need demonstrate exemplary achievements or promise in each of them. Promotion and tenure will generally be awarded as long as the evidence presented shows that a candidate's research/scholarship performance accomplishments are excellent and the candidate's teaching and service are also strong, or if a candidate's teaching accomplishments are excellent and the candidate's research/scholarship/ performance and service accomplishments are also sufficiently strong to meet the requirements for promotion or tenure.

It will be unusual and exceptional to award promotion and tenure merely on the basis of strong performance in only one of these areas. In every instance, the record of teaching, research (scholarship or creative performance), and service shall be thoroughly documented, in compliance with UCTP guidelines, with unit criteria regarding what constitutes high quality to serve as the basis for such decisions.
Several methods of evaluation should be used, and the record should be thorough enough to indicate not just past performance, but a reasonable likelihood of continued excellence.

Faculty members who are in positions that are primarily public service oriented should be evaluated with heavy emphasis placed on the quality of performance of the service provided. The faculty member with primarily public service responsibilities should be able to make a case for the quality of the public service work and how it relates to research and/or teaching. When teaching is a primary part of public service, the activity should be judged on criteria adapted from the evaluation of instruction.

Promotion to associate professor should be requested only if individuals show real promise that they will become leading teachers, researchers, scholars, or creative artists. Promise should, in fact, be substantiated by tangible, developing evidence.

Promotion from associate professor to professor should [normally] be based upon promise fulfilled. A move to the rank of professor should be accompanied by evidence of attainment of national or international stature in a field.
In summary, scholarship. teaching, and service are all to be considered at the time of promotion and/or tenure. The University cannot expect every faculty member's performance to be outstanding in all these functions. But if a candidate is weak in teaching or scholarly achievement—whether it be in research, scholarship, or creative performance—it should be recognized that promotion or the awarding of tenure may not be in the best interest of the University.

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TENURE REGULATIONS AND (NON) REAPPOINTMENT PROCEDURES

The University of South Carolina generally adheres in principle to the most recent standards of the American Association of University Professors regarding the rights, privileges and benefits accorded faculty members. Where University policies differ from those standards, the regulations Stated herein, or as subsequently modified by the University, shall apply.

It is the intent of the University to follow these regulations:

1. New members of the faculty will he informed in the offer of appointment of the tenure and reappointment regulations applicable to the position. Any change in these regulations prior to the effective date of the appointment will be communicated to, and receipt acknowledged by, the new faculty member in writing and made a part of the faculty member's official record.
   Recommendations to grant or deny tenure or reappointment are made by the tenured faculty of equal or higher rank in the unit and are accompanied by assessments of the candidate(s) from the department chair and the dean to the Provost.
   A faculty member who acquires tenure shall be so notified in writing.

2. Consistency and durability of performance are relevant factors in evaluating faculty for tenure therefore, the length of service which a faculty member has completed in a given rank is a valid consideration in formulating a tenure recommendation. Faculty members appointed at the rank of assistant professor normally will not be

recommended for tenure until they are in their fourth year at the University of South Carolina. Faculty members appointed at the rank of associate professor or professor normally will not be recommended for tenure until they are in their third year at the University of South Carolina.

3. The maximum probationary period for all full-time faculty members appointed at the rank of assistant professor is service for seven years at the University of South Carolina.
The maximum probationary period for all full-time faculty members appointed at the rank of associate professor or professor is service for six years at the University of South Carolina.

The maximum probationary period for all professional librarians is service for seven years at the University of South Carolina.
Time during which the faculty member is on leave, either with or without pay, will not be counted as part of the probationary period.

Unless specified otherwise by the local unit, there will be no distinction in application of criteria to candidates for tenure in their last year of eligibility and those in any year prior to their last year of eligibility.

4. Within the probationary period, all faculty appointments are on an annual basis.
Written notice will be given each year of reappointment or non-reappointment for the following year. If an appointment is not to be

renewed, adequate notice will be given. Adequate notice is as follows:

If the faculty member is in the first year of the probationary period, notice of non-reappointment will be given in writing by March 1 (July 1 for a second semester appointment).

If the faculty member is in the second year of the probationary period, notice will be given in writing by December 15 (April 15 for a second semester appointment).

Thereafter, notice of non-reappointment will be given in writing at least twelve months prior to the effective date.

If there is termination for cause, these notification requirements do not apply.

What constitutes cause and the procedures to be followed are those set forth in the provisions for termination of tenured faculty.
Non-reappointment during the probationary period is different from a decision of non-reappointment in conjunction with a denial of tenure in the penultimate year oft lie maximum probationary period and as such constitutes grounds for a grievance only wider the limited grounds stated in the Academic Grievance Procedures.

5. Before the end of the probationary period, a decision will be made to grant or deny tenure. If the decision is to deny tenure, notice will be given in writing

before the end of the penultimate year of the maximum probationary' period. If notice is not given by the specified time, the appointment of the faculty member will thereafter be a continuous (or tenured) appointment.

Non-reappointment in conjunction with denial of tenure in the penultimate year may be grounds for a grievance under the full provisions of the Academic Grievance Procedures.

6. Only full-time faculty members holding the rank of assistant professor; associate professor, professor, and professional librarian are eligible for tenure. Appointments to all other faculty ranks are on an annual basis and service under such appointments is not considered part of a probationary period for tenure consideration. Notice of non-reappointment is given according to the provisions in section 4 above. The termination of an appoint merit prior to its scheduled expiration shall only he for cause. What constitutes cause and the procedures to be followed are those set forth in the provisions for termination of tenured faculty.

   Termination or non-reappointment is not grounds for a grievance under the Academic Grievance Procedures.

7. The appointment of a non—tenured faculty member to an administrative position does not excuse the faculty member from the unit criteria for tenure and/or promotion.

8. Unless prohibited by unit tenure policies arid procedures candidates for faculty appointments may be recommended for tenure on appointment by a favorable vote of the tenured faculty of equal or higher rank in the unit.

9. A full-time administrator later appointed as a faculty member is not excused from the unit criteria for tenure and/or promotions.

ACADEMIC GRIEVANCE PROCEDURES

For grievances involving non-reappointment. see Sect ion I: for (hose involving denial of tenure or denial of promotion. see Section II. For grievances involving termination of a tenured faculty member, see Section III. For grievances or procedures other than those stated in Sections 1. II. and Ill, the faculty member shall attempt to resolve the issue at the department level. If a solution cannot be obtained at that level, the redress may be pursued through the subsequent offices of dean, Provost, and President. If redress cannot be obtained from any of these officers, the faculty member may appeal to the Faculty Grievance Committee If the committee (?) that there are grounds for a grievance, the committee shall attempt to resolve the matter through mediation or other appropriate action. The committee shall report its recommendations and the reasons therefor to the faculty member and to the President. The faculty member may appeal the act ion of the President to the Academic Affairs Committee of the Board of Trustees acting in consultation with the Faculty Liaison Committee. A review by the committee of the Board of Trustees is the final level of recourse within the University and actions by this committee are final.

I. GROUNDS FOR GRIEVANCE OF NON-REAPPOINTMENT

Grievances concerning non-reappointment arc limited to the grounds of denial of academic freedom or denial of procedural due process. The matter of due process is deemed to apply in particular to required annual faculty evaluation amid the observance of the timely notice requirements.
If these grounds are believed to exist the faculty member shall have access to the grievance procedures outlined in Section II.

II. GRIEVANCE PROCEDURE FOR DENIAL OF TENURE OR PROMOTION

If die grievance concerns denial of tenure or denial of promotion, the faculty member upon receiving notice may seek relief by taking the steps outlined below.
The grievance procedure may turn out to be lengthy. and the faculty member who initiates a grievance procedure is advised to maintain a file of dated correspondence sent and received as well as dates and notes of conferences held concerning the case. Failure of any administrative official or reviewing authority to comply with the deadlines for action specified herein shall not operate to reverse or modify a tenure or promotion decision, but shall permit the faculty member ((I proceed directly to petition the Faculty Grievance Committee for consideration.

I. The first recourse of (lie faculty member shall be to request an immediate oral and recommendations and the reasons therefor. The committee will not, however, substitute its judgment for the qualitative professional judgments of the faculty in determining whether the relevant unit criteria have been

adequately met. Thus, disagreement with such faculty judgment is not sufficient basis for the committee to recommend modification of the decision.
The committee shall be limited to considering whether or not there is a factual basis in the record, taken as a whole, upon which an individual acting in good faith could rationally reach the result attacked. If the committee recommends that the President modify or reverse a decision which is unfavorable to the faculty member, the President may act to implement the recommendation. If the President rejects the recommendation, the reasons therefrom shall be stated in writing to the faculty member and to the committee. The President shall act within 20 days on the committee's recommendation.

5. Within seven days of the receipt of notice of the disposition of the petition, the faculty member may appeal the President's final action to the Academic Affairs Committee of the Board of Trustees. The Academic Affairs Committee, in consultation with the Faculty Liaison Committee, shall have 3t) days in which to complete its review and communicate its findings to the President and the faculty member. A review by this committee of the Board of Trustees is the final level of recourse within the University, and action by this committee is final.

   A member (or members) of the Faculty Liaison Committee may find it desirable to withdraw from hearing a specific appeal. If the chair of the Faculty Senate should so withdraw, the past chair or the chair elect, whichever is appropriate. shall serve for that particular hearing. If the chair of the Faculty

Advisory Committee or Faculty Welfare Committee should withdraw, the relevant Committee shall appoint a replacement for that particular hearing.

III. TERM I NATION OF TENURED FACULTY CAUSES

Termination or dismissal of a tenured member of the faculty shall be only for cause.

Cause shall mean some or more of the following:

1. failure to perform adequately the duties of the position so as to constitute incompetence and/or habitual neglect of duty;
2. misconduct related directly and substantially to the fitness of the faculty member in the professional capacity as teacher or researcher;
3. conduct or action not protected by the Constitution or laws and which is a clear interference with the academic functions of the University;
4. prolonged inability for medical reasons to perform the duties required for the position; termination of a tenured member of the faculty for medical reasons will be based upon clear and convincing medical evidence that the faculty member cannot continue to fulfill the terms and conditions of appointment.
5. lapse or withdrawal of licensure to practice in the State of South Carolina or withdrawal of admitting privileges to affiliated teaching hospitals with respect to clinical faculty in the School of Medicine: the loss of licensure in

any other professional area may also be considered as a cause for termination if the License is necessary for the performance of one's academic duties;

6. bona fide reduction in staff, which may be caused by financial exigency or by discontinuance or reduction in size of a program or instructional unit for reasons not related to financial exigency.

PROCEDURES

A. TERMINATION FOR FAILURE TO PERFORM DUTIES DUE To INCOMPETENCE AND/OR HABITUAL NEGLECT OF DUTY; TERMINATION FOR CONDUCT AS SPECIFIED IN 2 AND 3 ABOVE; MEDICAL REASONS; TERMINATION FOR LAPSE OR WITHDRAWAL. OF LICENSE.

I. Discussion with the President.
After it becomes evident to the President that termination may be desirable there must be discussion between the faculty member and the President with the intent of arriving at a mutually agreed upon resolution.

2. Re-Assignment.
The President may assign the faculty member to new duties if the faculty member's continuance in normal duties threatens immediate harm to that faculty member or to others.

3. Faculty Advisory Committee Review.

If the President and the faculty member are unable to reach a resolution, the President shall inform the Faculty Advisory Committee of his or her desire to terminate a tenure(I member of the faculty. The President shall give this committee a statement of charges. framed with reasonable particularity, and the factual basis h)r these charges, also stated with reasonable particularity. The function of the committee shall be to determine whether the facts alleged. If true, would establish the charge and whether the charge is of such a nature as to warrant termination. The discussions, records, and recommendations of the committee shall remain confidential.

The committee shall inform in writing both the President and the faculty member of its recommendations and its reasons therefor.

Should the President then wish to pursue termination proceedings he or she shall, by letter, inform the faculty member of the intention to terminate, including a precise statement of specific charges. The letter shall also inform the faculty member of the member's right to request a hearing on this decision by the Tenure Review Board. (See below)

If the faculty member takes no action within ten days of receipt of notification by the President. the President, without recourse to further proceedings may send a written letter of termination.

4. Tenure Review Board Hearings.

If the faculty member desires a hearing by the Tenure Review Board, the member must so inform the board and the President in writing within ten days of receipt of notification by the President of the proposed termination. Upon receipt of a written request for a hearing, the chair of the Tenure Review Board shall schedule a hearing no sooner than 20 days and no later than 60 days from the date of receipt. All parties must be given written notice as to time, date, and place. The board may hold joint prehearings with the parties iii order to simplify the issues, effect stipulations of facts, or for other appropriate objectives as will make the hearing fair, effective, and expeditious. At this stage, members of the board may disqualify themselves for bias or interest, and the parties involved may raise the question of disqualification. The Senate Steering Committee shall appoint new members to fill vacancies created on the Tenure Review Board for this particular hearing.
The following standards and procedures shall apply in the conduct of the hearing:

a. The hearing shall be closed.

b. A verbatim record of the hearing or hearings will be taken and a copy made available to the faculty member on request and without cost.

c. The burden of proof that adequate cause exists rests with the President and shall be satisfied only by clear and convincing evidence in the record, as established at the hearing, considered as a whole.

d. The faculty member may choose an academic advisor and/or counsel to be present during the proceedings.

e. The faculty member will be afforded an opportunity to obtain necessary witnesses and documentary or other evidence. The President will cooperate with the board in securing witnesses and making available documentary and other evidence.

f. The board may grant adjournments to enable either party to investigate evidence to which a valid claim of surprise is made.

g. The faculty member and advisor or counsel and the President or representative will have the right to confront and cross-examine all witnesses. Where the witnesses cannot or will not appear but the board determines that the interests of justice require admission of their statements, the board will identify the witnesses, disclose statements, and, if possible. provide for interrogatories.

h. The board will not be bound by strict rules of legal evidence and may admit any evidence which is of probative value in determining the issues involved.
Every possible effort will be made to obtain the most reliable evidence available.

i. The findings of fact and the decision of the board will be based solely on the hearing record.

If the Tenure Review Board concludes that adequate cause for termination has been established. it shall so inform the President and the Faculty member.

If the hoard concludes that action short of termination would be more appropriate. it shall so inform the President and the faculty member. together with supporting reasons, and the termination proceedings shall stop at this point.

If the hoard concludes that adequate cause for termination has not been established. it shall so inform the President and the faculty member, together with supporting reasons. and the termination proceedings shall stop at this point.

5. Final Disposition and Appeals
Within ten days of receipt of the hoard's report. the President shall inform in writing the faculty member and the board of his or her decision together with supporting reasons. The President shall inform the faculty member of the right

to appeal an adverse decision to the Academic Affairs Committee of the Board of Trustees, sitting in consultation with the Faculty Liaison Committee. If the faculty member takes no action within ten days of receipt of notification by the President. the President may send a letter of termination.
The decision by the Academic Affairs Committee is final within the University. If the committee's decision is to support the intention of the President. the President may then send formal notification of termination.

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Exhibit A to Plaintiff's Memorandum, filed 9/22/99

THE UNIVERSITY OF SOUTH CAROLINA

July 26, 1994

Dr. George D. Terry, Vice-Provost and Dean
Libraries and Information Systems
The University of South Carolina

Dear George:

Thomas Parkman has played a major and constructive role in planning the design, construction, and equipping of the new music library. When completed, the music library will occupy a prominent place in the new building and will actually be a larger facility than was originally designed. Mr. Parkman has worked closely with School of Music faculty who are planning the new facility and has been a strong advocate for the installation of a multiplex system and a 3M security system and has provided input for the purchase of other equipment and furnishings. Mr. Parkman and Professor G.B. Lane made a two-day trip to the University of Tennessee to view the music library at that institution as well as the audio and other systems and to solicit input from librarians. Mr. Parkman has been in contact with library faculty in other music libraries, has worked closely with Ed Breeland of the University's office of Instructional Services, and has conducted discussions with numerous sales personnel for various systems.

The task of planning the layout and equipping the new music library is complex. Mr. Parkman has done an excellent job of educating himself about different systems and technologies and about staffing and other problems that might be encountered in the new facility. He has worked well with representatives from the School of Music and has apprised me and other library administrators of concerns.

In the area of collection management, Mr. Parkman has been responsible for the purchase of all audio and audio visual material for the music collection. The approval plan for musical scores, which became operational in July 1993, has produced very satisfactory results. In ordering material for the collection, Mr. Parkman works closely with music faculty to determine which materials should be added to the collection.

Thomas Parkman has had a productive and constructive year as music librarian. He has worked closely with G.B. Lane and other music faculty in planning the new music library. He has been a strong advocate for the needs of the new facility; and as the plans are taking shape, it would appear that he has been an effective advocate.

Sincerely,

Allen Stokes, Director
South Caroliniana Library

Testimony of Thomas Parkman
[Tr. 39, lines 4-6]

Q. WHAT YEAR DID YOU FIRST START WORKING IN THE MUSIC LIBRARY?

A. NINETEEN SEVENTY-SIX, JANUARY 3RD OR 4TH OF 1976.

Testimony of Thomas Parkman
[Tr. 42, lines 16-18]

Q. WHEN YOU FIRST BEGAN TO WORK TN THE MUSIC LIBRARY IN 1976, WHERE WAS IT LOCATED?

A. IT WAS LOCATED IN THE GROUND BOTTOM FLOOR OF MCMASTER

Testimony of Thomas Parkman
[Tr. 44, lines 6-13]

Q. IT WAS IN 1995 THAT YOU MOVED INTO THE NEW BUILDING?

A. INTO THE NEW BUILDING, THAT MONSTROSITY THEY PUT DOWN THERE NEXT TO THE KOGER CENTER. BARNUM AND BAILEY CIRCUS

A. I SPENT FIVE YEARS PLANNING THAT NEW LIBRARY. I WASN'T

Testimony of Thomas Parkman [Tr. 45, lines 7-25]

Q. DO YOU RECALL WHEN JENNIFER OTTERVIK BEGAN WORKING IN THE MUSIC LIBRARY WITH YOU?

A. ABOUT THE MIDDLE OF JANUARY. I WILL SAY JANUARY 15, 10, 1995.

Q. HAD YOU BEEN INVOLVED AT ALL IN INTERVIEWING HER FOR THAT POSITION?

A. YES.

Q. YOU MET WITH HER DURING THE INTERVIEWING PROCESS?

A. YES.

Q. WHAT WAS YOUR INVOLVEMENT?

A. I WAS SORT OF AN OBSERVER. THERE WAS A COMMITTEE THAT WAS APPOINTED TO -- THERE WERE THREE CANDIDATES THEY BROUGHT IN AND SHE WAS ONE OF THOSE CANDIDATES AND THE COMMITTEE MADE

THE ASSESSMENT OF WHOM THEY WANTED TO BE THE LIBRARIAN.

Q. DID YOU HAVE ANY INVOLVEMENT IN THAT DECISION?

A. NO. I OPPOSED IT.

Q. WHY?

A. I SAW FROM THE VERY BEGINNING THAT WE WOULD HAVE SEVERE PERSONALITY CLASHES.

Testimony of Thomas Parkman
[Tr. 67, lines 19-21]

A. YES. WE WERE PROBABLY GOING TO TAKE IT TO GEORGE TERRY. UP THE CHAIN OF COMMAND FROM ALLEN STOKES TO GEORGE TERRY.

Q. GEORGE TERRY IS ALLEN STOKES' IMMEDIATE SUPERVISOR?

A. YES. THIS WOULD BE THE CHAIN OF COMMAND AND OF COURSE NIT-PICKY DETAIL TO THE ADMINISTRATION. AS A DEPARTMENT HEAD YOU ARE SUPPOSED TO BE ABLE TO DEAL WITH SOME OF YOUR OWN PROBLEMS.

Testimony of Thomas Parkman
[Tr. 163, lines 3-25]

A. IN OTHER WORDS, WHEN YOU ARE HIRED AS A TENURED, THEY SAY YOU ARE FACULTY MEMBER, YOU ARE THEN GRANTED TENURE, THAT IS PART OF A CONTRACTUAL OBLIGATION.

Q. THESE EXHIBITS AWARDING YOU TENURE IS WHAT YOU ARE REFERRING TO?

A. YES. AND THE POLICIES AND PROCEDURES OF THE UNIVERSITY AS THEY ARE WRITTEN.

Q. THAT INCLUDES THE DOCUMENTS WE MADE EXHIBITS?

A. YES.

Q. ARE THERE ANY OTHER DOCUMENTS?

A. NOT TO MY KNOWLEDGE, NO.

Q. WHAT IS YOUR DEFINITION OF TENURE?

A. TENURE SIMPLY MEANS THAT YOU WILL HAVE A JOB ON THE FACULTY OF THE LIBRARY OR WHATEVER FACULTY YOU ARE IN AND THAT YOU CANNOT BE FIRED OR REMOVED WITHOUT CAUSE. IN OTHER WORDS, MY UNDERSTANDING IS THAT IF PEOPLE TAKE ACTIONS AGAINST YOU THEY TAKE THEM ON THE BASIS OF CAUSE.

Q. YOU HAVE NOT BEEN FIRED, IS THAT RIGHT?

A. THAT'S CORRECT.

Q. YOUR CONCERN IS THAT YOU WERE TRANSFERRED TO THIS OTHER POSITION IN THE CAROLINIANA LIBRARY?

A. MY CONCERN IS THAT MY CAREER AS A PROFESSIONAL LIBRARIAN HAS BEEN DESTROYED.

Testimony of Thomas Parkman
[Tr. 164, lines 1-25]

Q. YOU ARE STILL A FACULTY MEMBER, AREN'T YOU?

A. YES.

Q. AND YOU ARE STILL MAKING THE SAME MONEY, EVEN MORE AS TIME GOES BY, AREN'T YOU?

A. A FRACTION OF A PERCENT MORE. EVEN THE COST OF LIVING PAY INCREASES THAT CLASSIFIED STATE EMPLOYEES GET WE UNCLASSIFIED PEOPLE DON'T GET. SIMPLY AT THE WHIM OF THE ADMINISTRATION.

Q. SINCE YOU HAVE BECOME A TENURED LIBRARIAN YOUR PAY HAS NOT GONE DOWN AT ANY TIME, HAS IT?

A. NO.

Q. AND YOUR BENEFITS REMAIN THE SAME, AT LEAST THE SAME?

A. YES.

Q. AND YOU ARE STILL A TENURED LIBRARIAN, AREN'T YOU?

A. YES. HOWEVER, I WOULD AMEND THAT BY SAYING WHEN YOU TAKE SOMEBODY WHO IS A DEPARTMENT HEAD, HAS BEEN HEAD OF A UNIT IN THE ORGANIZATION FOR 20 YEARS THAT IS RESPONSIBLE FOR SUPERVISING SOMETHING LIKE 13 PEOPLE, AND THEN TAKE THAT PERSON THAT IS USED TO DOING THINGS LIKE COLLECTION DEVELOPMENT, DOCTORAL RESEARCH, AND ALL OF THE REST OF THE STUFF AND PUT HIM IN A CUBICLE WITH A WOODEN BOARD FOR A TABLE AS A CALCULATED POLICY TO HARM HIS HEALTH AND DRIVE HIM OUT OF THE UNIVERSITY, THIS KIND OF DEMOTION WHERE YOU NOT ONLY TAKE HIM OUT OF A JOB BUT YOU MAKE SURE THAT HE COULDN'T GET ANOTHER JOB EVEN IF HE WANTED TO, AND YOU PUT HIM IN A SITUATION WHERE YOU ARE GOING TO

Testimony of Thomas Parkman
[Tr. 165, lines 1-15]

A. MAKE HIM AS HUMILIATED AND PHYSICALLY AND EMOTIONALLY AS UNCOMFORTABLE AS POSSIBLE, IT WOULD HAVE BEEN KINDER TO ME HAD THESE PEOPLE FIRED ME THAN DO TO ME WHAT THEY DID.

Q. YOU DON'T LIKE THE CAROLINIANA LIBRARY?

A. IT'S NOT A QUESTION OF MY LIKING OR DISLIKING IT. I DO NOT LIKE IT, NO. I DON'T KNOW ANYTHING ABOUT SOUTH CAROLINA. HAVE NOT BEEN TRAINED IN THAT HIGHLY SPECIALIZED AREA AND WHAT I DO IN THAT LIBRARY IS NOTHING THAT A GRADUATE STUDENT OR STUDENT COULDN'T DO. WHAT THEY HAVE ME DOING IS I AM SITTING AT A PAINTED BOARD IN A CRAMPED, COLD ALCOVE IN THE BACK STACKS IN AN AREA THAT IS INJURIOUS TO MY HEALTH, AND I AM SITTING TAKING BOOKS, I TAKE BOOKS AND I CARRY BOOKS FROM A SHELF, PUT THEM ON A PAINTED BOARD AND GO THROUGH AND COMPARE THOSE BOOKS TO A SHELF LIST CARD, AND I WILL SIT DOWN AND WRITE AND MAKE NOTES THAT THIS COLLECTION IS IN APPALLING CONDITION, MAKE NOTES THAT

Testimony of Thomas Parkman
[Tr. 166, lines 1-4]

A. PER SE. THE QUESTION THAT THEY ARE NOT THINGS THAT A PROFESSIONAL LIBRARIAN WOULD BE ASSIGNED TO DO---

Q. ARE THEY THINGS THAT NEED TO BE DONE?

A. YES. OF COURSE.

Testimony of Thomas Parkman
[Tr. 181, lines 2-4]

A. I WAS SHIFTED OVER TO CAROLINIANA.

Q. THAT WAS A PERMANENT TRANSFER?

A. YES. I WAS CALLED A SPECIAL PROJECTS LIBRARIAN.

Testimony of Thomas Parkman
[Tr. 228, lines 1-8]

Q. YOU'RE TALKING ABOUT CORRESPONDENCE GEORGE TERRY SENT TO YOU AFTER THE DETERMINATION CAME OUT?

A. THERE WAS A MEETING, YES, AND HE ALSO STATED THAT CASES OF SEXUAL HARASSMENT ARE NOT PROTECTED UNDER THE CONSTITUTION AND THE LAWS, SO THAT HE DENIED ME CONSTITUTIONAL PROTECTIONS. HE THEN, AS I SAY, REASSIGNED ME TO A DELIBERATELY DEMEANING AND HUMILIATING POSITION TO, I BELIEVE, RUN ME OUT OF THE UNIVERSITY.

Testimony of Thomas Parkman
[Tr. 232, lines 5-11]

Q. IS THERE ANYTHING ELSE THAT YOU FEEL THAT ANYBODY ELSE AT U.S.C. DID THAT WAS INTENDED TO INFLICT EMOTIONAL DISTRESS ON YOU?

A. AS I SAY, WHOEVER MADE THE DECISION TO PUT ME IN THAT CUBICLE IN CAROLINIANA. IT'S A VERY DEPRESSING PLACE TO WORK. THAT HAS BEEN EMOTIONALLY VERY PAINFUL AT TIMES. IT'S A VERY UNPLEASANT PLACE.

Testimony of Thomas Parkman
[Tr. 252, lines 5-11]

Q. CAN YOU TELL ME WHAT YOUR DUTIES WERE WHEN YOU WERE MUSIC LIBRARIAN?

A. OH, GOD, EVERYTHING. THAT IS WHAT MADE THE JOB SO INTERESTING, THERE WAS NO ONE THING I DID. I DID EVERYTHING. DID REFERENCE WORK ALL THE WAY FROM THE SIMPLEST REFERENCE QUESTIONS TO VERY DIFFICULT ADVANCED RESEARCH FOR DOCTORAL CANDIDATES IN DOING THEIR THESES AND DOING

LANGUAGES. I WENT AND GOT RECORDS AND CHECKED OUT BOOKS. AND I HATE HANDLING MONEY. I HAD TO GIVE OUT FINES. I MADE MY JOKES ABOUT MY – I CALLED THE FINE BOX MY EGGROLL FUND, MY EGGROLL ADDICTION. 'I HAVE AN EGGROLL ADDICTION, AND THIS IS MY FINE BOX, AND YOU PUT THE MONEY IN HERE AND I USE IT TO GO BUY MY EGGROLLS,' BECAUSE I HATE HANDLING MONEY. AND I WOULD BE RESPONSIBLE FOR THE MONEY, RESPONSIBLE FOR HIRING AND SUPERVISING STUDENTS, I WAS RESPONSIBLE FOR THE MAINTENANCE OF THE MUSIC LIBRARY, I WAS RESPONSIBLE FOR ORDERING ALL OF THE EQUIPMENT, I WAS THE PERSON WHO COORDINATED THE COLLECTION DEVELOPMENT, THAT IS THE – I USED TO CALL MYSELF THE DUCK OF THE MUSIC SCHOOL, BEING NAGGED IS LIKE BEING NIBBLED TO DEATH BY A DUCK, BECAUSE THESE MUSIC FACULTY MEMBERS WOULD NOT WANT TO TURN IN ORDER LISTS FOR SCORES AND THINGS, AND WE HAD THIS MONEY TO SPEND, AND I WOULD GO AND COORDINATE THE ORDERING OF THE SCORES AND ITEMS AND BOOKS AND

Testimony of Thomas Parkman
[Tr. 253, lines 1-2]

A. SCORES AND THAT KIND OF THING. THOSE ARE THE MAIN THINGS THAT COME TO MIND.

Testimony of George Terry
{Tr. 10, lines 18-25]

Q. WAS HE TRANSFERRED TO PEARLE VISION BECAUSE OF THE SEXUAL HARASSMENT COMPLAINTS OF WHITSON AND OTTERVIK OR WAS HE TRANSFERRED OVER THERE BECAUSE THE MUSIC FACULTY OR SOMEBODY ELSE HAD COMPLAINED ABOUT THIS BEHAVIOR YOU JUST DESCRIBED TO US?

A. THE SEXUAL HARASSMENT.

Q. THAT'S THE ONLY REASON?

A. YES, SIR.

Testimony of George Terry
[Tr. 12, lines 7-22]

Q. DID YOU HIRE JENNIFER OTTERVIK?

A. THE SEARCH COMMITTEE RECOMMENDED HER AND I WAS THE FINAL.

Q. YOU KNEW MR. PARKMAN WAS OPPOSED TO HER HIRING?

A. I THINK HE WOULD HAVE BEEN OPPOSED TO ANYBODY'S HIRE.

Q. BUT HE WAS OPPOSED TO JENNIFER OTTERVIK?

A. BECAUSE SHE WAS THE ONE THAT GOT HIRED.

Q. WELL, I MEAN YOU SPECULATE HE WOULD HAVE BEEN OPPOSED TO ANYBODY. YOU DON'T REALLY KNOW THAT. WHAT YOU KNOW IS SHE WAS HIRED AND HE DIDN'T WANT THAT?

A. I KNOW IT.

Q. WAS THAT A NEW POSITION?

A. YES, SIR.

Q. SHE WAS SECOND IN COMMAND OF THE MUSIC LIBRARY?

A. YES, SIR.

Q. AND HER IMMEDIATE SUPERIOR THEN WAS MR. PARKMAN?

A. YES.

Testimony of George Terry
[Tr. 19, lines 12-18]

Q. AND PARKMAN HAD WORKED PRETTY HARD DURING THAT MOVE, HADN'T HE?

A. HE DID. HE DID AN EXCELLENT JOB OF PLANNING THAT BUILDING.

Q. AND HE HAD SPENT THE LAST 20 YEARS BEFORE THAT IN A PRETTY LOUSY PLACE, HADN'T HE?

A. HE HAS BEEN UNHAPPY WITH EVERY PLACE HE'S BEEN IN.

Testimony of George Terry
[Tr. 24, lines 9-25]

q. TELL ME WHAT YOUR UNDERSTANDING OF MR. PARKMAN'S DUTIES IS AT THIS TIME, WHAT DOES HE DO OVER THERE?

A. MR. PARKMAN IS DOING WHAT HE TESTIFIED HE WAS DOING YESTERDAY OR THIS MORNING.

Q. THAT IS YOUR CHARACTERIZATION OF HIS TESTIMONY. I WANT YOU TO TELL ME WHAT YOUR UNDERSTANDING OF HIS DUTIES IS?

A. HE IS TO EXAMINE EVERY BOOK IN A CLOSED STACK AREA. RARE BOOKS. MOST OF THEM ARE VERY RARE. MANY OF THEM ARE VERY FRAGILE AND WE WOULD NEVER HAVE A GRADUATE STUDENT OR UNDERGRADUATE STUDENT HANDLE THOSE TYPES OF BOOKS. THIS IS THE FIRST TIME WE HAVE DONE ONE OF THESE PROJECTS

AND IT'S VERY IMPORTANT TO BE DONE BECAUSE THE BUILDING IS SLATED TO BE RENOVATED. PART OF THE WORK HAS ALREADY BEEN DONE.

Q. HAVE YOU VISITED HIS WORK SPACE?

A. OH, YES.

Q. DESCRIBE IT FOR US.

A. IT'S A WOODEN DESK. THAT'S BASICALLY WHAT IT IS.

Testimony of George Terry
[Tr. 25, lines 1-25]

Q. UPSTAIRS?

A. YES.

Q. SOUTH CAROLINIANA LIBRARY?

A. YES, SIR.

q. NO OFFICE?

A. VERY FEW PEOPLE AT THE CAROLINIANA LIBRARY HAVE AN OFFICE.

Q. I UNDERSTAND. I AM NOT TALKING ABOUT THE OTHER PEOPLE. I AM TALKING ABOUT MR. PARKMAN HERE. WE'RE DESCRIBING HIS WORK AREA. IT'S UP IN A CORNER OF

THE SOUTH CAROLINIANA LIBRARY UPSTAIRS AMONG THE STACKS, CORRECT?

A. YES, SIR.

Q. IT'S NOT IN A ROOM, THERE'S NO WINDOW, NO ACCESS EXCEPT DOWN THESE STAIRS THAT LEAD UP AND DOWN IN THE STACKS, RIGHT?

A. YES, SIR.

Q. DO YOU KNOW OF ANYBODY ELSE WHO HAS BEEN ASSIGNED TO A JOB LIKE THAT WHO HAS HAD THE EXPERIENCE AND POSITION AS A TENURED LIBRARIAN THAT MR. PARKMAN HAS?

A. YES, SIR.

Q. WHO?

A. WELL, THERE IS ROGER MORTIMER, FOR EXAMPLE.

Q. TELL ME WHAT ROGER DOES.

A. HE BASICALLY IS DOING THE SAME THING THAT MR. PARKMAN IS DOING IN THE STACK AREA IN THE THOMAS COOPER LIBRARY IN PREPARATION FOR US MOVING TO A NEW REMOTE STORAGE FACILITY.

Testimony of George Terry
[Tr. 26, lines 1-25]

Q. IS THAT SOMETHING HE WANTED TO DO?

A. I'M NOT SURE.

Q. IT WASN'T PUNISHMENT, WAS IT? HE HASN'T DONE ANYTHING WRONG TO OFFEND ANYBODY, HAS HE?

A. PROBABLY.

Q. OH, HE HAS?

A. YES, SIR.

Q. SO IT IS A PUNISHMENT?

A. (NODDING.)

Q. YOU'RE NODDING YOUR HEAD?

YES, SIR. NOW ONE THING THAT IS DIFFERENT IS THAT HE DOES HAVE AN OFFICE. MR. MORTIMER HAS AN OFFICE AND ONE OTHER THAT IS GOING TO CHANGE IS THE REASON WE DON'T HAVE AS MANY OFFICES AS WE NEED AT CAROLINIANA IS, ONE, THAT THE STAFF IS GROWING OVER THERE SO FAST AND, TWO, MOST OF THEM DON'T EVEN HAVE AS LARGE A SPACE AS MR. PARKMAN IN TERMS OF WHERE THEY DO THEIR WORK. BUT WE PROBABLY WILL, ONCE THE BUILDING IS BEING RENOVATED, CREATE MORE OFFICES.

Q. WHAT WAS MR. PARKMAN DOING DOWN AT THE PEARLE VISION CENTER OFFICE?

A. I AM NOT EXACTLY SURE. I THINK HE WAS ARRANGING THE RECORD COLLECTION OR CATALOGING IT OR MAKING AN INVENTORY OF IT. I AM NOT POSITIVE.

Q. DO YOU THINK THAT CHALLENGES THE SKILL AND EXPERIENCE OF A 20-YEAR VETERAN TENURED MUSIC LIBRARIAN?

Testimony of George Terry
[Tr. 27, lines 1-25]

A. I THINK IT CERTAINLY NEEDS TO BE DONE BY A LIBRARIAN.

Q. HOW MANY LIBRARIANS DO YOU HAVE OVER THERE?

A. PROBABLY ABOUT 65.

Q. HOW MANY OF THEM ARE TENURED?

A. PROBABLY ABOUT 40.

Q. HOW MANY OF THEM ARE DOING SIMILAR DUTIES TO MR. PARKMAN?

A. THEY DO MANY DIFFERENT DUTIES.

Q. THAT IS NOT WHAT I ASKED YOU. YOU KNOW WHAT MR. PARKMAN IS DOING, HE WORKS FOR YOU. HOW MANY TENURED LIBRARIANS ARE DOING WHAT HE DOES?

A. JUST MR. MORTIMER.

Q. AND HE IS BEING PUNISHED?

A. (NODDING YES.) HE'S NOT BEING PUNISHED; HE'S BEING REASSIGNED. THERE'S A BIG DIFFERENCE.

Q. IS THAT A EUPHEMISM FOR BEING PUNISHED IN THE LIBRARY SYSTEM?

A. NO. IT IS WHAT WE DO AT THE UNIVERSITY. ALL DEANS HAVE THE PREROGATIVE TO DO THAT AND YOU EVEN NOTED THAT IN ONE OF YOUR LETTERS TO THE PRESIDENT OR TO THE GRIEVANCE COMMITTEE THAT IT WAS MY PREROGATIVE TO REASSIGN MR. PARKMAN.

Q. IF IT WASN'T PUNITIVE.

A. USUALLY A REASSIGNMENT HAS SOME OF THAT WITH IT.

Q. PUNITIVE. SOMETHING PUNITIVE INVOLVED, IS THAT WHAT YOU ARE TRYING TO SAY?

A. EITHER THAT OR LIKE, FOR EXAMPLE, IF A DEPARTMENT HEAD IS

Testimony of George Terry
[Tr. 28, lines 1-3]

Q. NOT WORKING OUT AS A DEPARTMENT HEAD SOMETIMES YOU REASSIGN THEM JUST LIKE WE HAVE HAD DEANS THAT ARE REASSIGNED TO GO BACK TO TEACHING LIKE DOROTHY PAYNE.